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# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: MAY 15, 1989**

**Volume 4 • Issue 4 • Pages 217-289**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N.C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volume totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 19 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# **NORTH CAROLINA REGISTER**

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*Publication Deadlines and Schedules*  
*(January 1989 - May 1990)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
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12/15/89	11/22/89	12/01/89	01/14/90	04/01/90
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04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

## PROPOSED RULES

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### TITLE 2 - DEPARTMENT OF AGRICULTURE

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend rule(s) cited as 2 NCAC 20B .0413; 2 NCAC 43L .0401 - .0403; 2 NCAC 48A .0805, .0901, .1103, .1201; 2 NCAC 48C .0002, .0005 - .0006, .0008 - .0009, .0023; and adopt rule(s) cited as 2 NCAC 43L .0409; 2 NCAC 53 .0001 - .0075.*

*The proposed effective date of this action is October 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on June 21, 1989 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.*

**Comment Procedures:** Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

### CHAPTER 20 - THE NORTH CAROLINA STATE FAIR

#### SUBCHAPTER 20B - REGULATIONS OF THE STATE FAIR

##### SECTION .0400 - OPERATION OF STATE FAIR FACILITIES

###### .0413 ALCOHOLIC BEVERAGES

(a) A person shall not sell, offer for sale, or possess for the purpose of sale, any alcoholic beverage on State Fair property without the written permission of the State Fair Manager and the applicable ABC permit(s).

(b) A person shall not possess or consume any alcoholic beverage at ticketed, commercial events that are open to the public on State Fair property except as permitted under Paragraph (a) of this Rule.

*Statutory Authority G.S. 106-503.*

### CHAPTER 43 - MARKETS

#### SUBCHAPTER 43L - MARKETS

##### SECTION .0400 - FEES: WESTERN NORTH CAROLINA FARMERS MARKET

###### .0401 RETAIL BUILDINGS

Rental charges for space in the "Retail Buildings" shall be at the rate of ~~four dollars~~

~~(\$4.00) five dollars (\$5.00) per day or twenty-four dollars (\$24.00) thirty dollars (\$30.00) per week per assigned space of ten feet by 20 feet from June through September October and two dollars (\$2.00) per day from October when the space is used during the months of November through May. A holding fee of ten dollars (\$10.00) per month shall be charged during December, January, February and March for each space to be rented on April 1.~~

*Statutory Authority G.S. 106-530.*

###### .0402 GATE FEES

~~Farmers or truckers who do not have stall spaces rented shall pay the following fees when entering the Market:~~

Cars	\$1.00
Pickups	\$3.00
<b>Ton Trucks:</b>	
Less than 50 cartons -	
Mark ticket "Pick up Load"	\$3.00
Over 50 cartons -	
Mark ticket "Ton"	\$5.00
<b>Ten Wheeler:</b>	
Less than 50 cartons -	
Mark ticket "Pick up Load"	\$3.00
51 to 100 cartons -	
Mark ticket "Ton Load"	\$5.00
Over 100 cartons -	
Mark ticket "10 Wheeler"	\$6.00
<b>Eighteen Wheeler:</b>	
Less than 20 cartons -	
Mark ticket "Pick up Load"	\$3.00
21 to 100 cartons -	
Mark ticket "Ton Load"	\$5.00
101 cartons to half load -	
Mark ticket "10 Wheeler Load"	\$6.00
Over half load -	
Mark ticket "18 Wheeler"	\$8.00
<b>EXEMPT:</b>	
Trucks delivering freight, soft drinks, candy, snack bar supplies, etc....	
<b>NO CHARGE</b>	

(a) Gate fees for farmers or truckers who do not otherwise rent stall spaces at the Market shall be as follows:

Cars or less than 5 cartons
Pickups
Ton trucks:
50 cartons or less
More than 50 cartons
10 Wheeler:

## PROPOSED RULES

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<u>50 cartons or less</u>
<u>51 to 100 cartons</u>
<u>More than 100 cartons</u>
<u>18 Wheeler:</u>
<u>20 cartons or less</u>
<u>21 to 100 cartons</u>
<u>101 cartons to half load</u>
<u>More than half load</u>

Sellers of in-state products	Sellers of out-of-state products
\$ 1.00	\$ 1.00
4.00	5.00
4.00	5.00
6.00	7.00
4.00	5.00
6.00	7.00
7.00	8.00
5.00	5.00
7.00	7.00
8.00	8.00
10.00	10.00

(b) Trucks which deliver such items as soft drinks, candy, snack bar supplies and freight are exempt from the gate fees stated in this Rule.

Statutory Authority G.S. 106-530.

### .0403 FARMERS AND TRUCKERS SHEDS

Rental charges for space under the "Farmers and Truckers Sheds" for each 12 foot wide stall shall be five dollars (\$5.00) six dollars (\$6.00) per day or one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) per month from June through September, October, seventy-five dollars (\$75.00) per month for April, May, October, November and December, and fifty dollars (\$50.00) per month for January, February, and March. Electricity used shall be paid for in addition to these regular fees. A holding fee of ten dollars (\$10.00) per month shall be charged during December, January, February and March for each space to be rented on April 1.

Statutory Authority G.S. 106-530.

### .0409 FEES FOR SPECIAL EVENTS

The Market Manager shall have the right to establish reasonable fees for special events not otherwise covered in these rules.

Statutory Authority G.S. 106-530.

## CHAPTER 48 - PLANT INDUSTRY

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## SUBCHAPTER 48A - PLANT PROTECTION

### SECTION .0800 - POTATO VIRUS Y

#### .0805 EXEMPTIONS

Plants may be exempted ~~form~~ from the provisions of this quarantine provided they meet the following provisions:

- (1) All plants are grown in a greenhouse;
- (2) The plants are maintained aphid free by means of insecticidal treatment;
- (3) The appropriate state agency of the quarantined state certifies that the provisions in this Rule have been met and that the plants are apparently free of potato virus Y and so indicates by means of stamp or printed label on each carton, crate or box.

Statutory Authority G.S. 106-65.45; 106-65.46.

### SECTION .0900 - SWEET POTATO WEEVIL

#### .0901 REGULATED AREAS

The following areas are regulated:

- (2) North Carolina. New Hanover County: The entire island bordered on the west by the Cape Fear River and on the east by the Atlantic Ocean and south of that line established from the Carolina Beach Inlet from the Atlantic Ocean along the Intra Coastal Intracoastal Waterway at Snow Canal until it reaches the Cape Fear River;
- (3) Brunswick County. The entire area bordered on the north by the Intracoastal Waterway and on the east by the Cape Fear River and on the south by the Atlantic Ocean and on the west by a straight line beginning at the junction of Highway 133 with the Intracoastal Waterway, extending south through the point where Highway 133 ends, and terminating at the junction of said straight line with the Atlantic Ocean;

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

### SECTION .1100 - TOBACCO PLANT CERTIFICATION

#### .1103 UNLAWFUL USE OR DISTRIBUTION OF PLANTS

- (a) No person, firm, company, partnership or corporation (hereinafter "person") shall pack, transport, sell or offer for sale, ship or bring into or plant in this state any tobacco plants produced out of state unless such plants are certified tobacco plants and are imported under the a tobacco plant import permit.

## PROPOSED RULES

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

### SECTION .1200 - NURSERY CERTIFICATION

#### .1201 DEFINITIONS

##### Definitions:

(15) Plant Material. All wild, cultivated, or greenhouse grown plants, trees, shrubs, vines, bulbous plants and roots, grafts, scions, and buds grown or kept for or capable of propagation, distribution, or sale. Excluded are annual plants, cut flowers, ~~trees, and tree,~~ field, vegetable and flower ~~weed~~ seed. Also excluded are decorative plants without roots not intended for propagation;

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

### SUBCHAPTER 48C - SEEDS

#### .0002 NOXIOUS WEED SEED LIST

The following weed seeds are classified as prohibited noxious or restricted noxious:

(1) prohibited noxious: PROHIBITED:

- (a) Crotalaria -- Crotalaria spectabilis, and/or mucronata;
- (b) Johnson grass -- Sorghum halepense;
- (c) Witchweed -- Striga asiatica;
- (d) Jimsonweed -- Datura stramonium;
- (e) Balloon vine -- Cardiospermum halicacabum;
- (f) Itchgrass -- Rottboellia exaltata;
- (g) Serrated Tussock -- Nassella trichotoma;

(2) restricted noxious: RESTRICTED:

Limitations  
Per 1 lb. of Seed

(a) Nutsedge -- Cyperus rotundus,	2 tubers <del>in peanuts</del> <del>(27 seeds)</del> or 27 seeds
and/or esculentus	
(b) Blessed Thistle -- Cnicus benedictus	4 seeds
(c) Cocklebur -- (Xanthium spp.)	4 seeds
(d) Sandbur -- Cenchrus <del>paeuciflorus</del> spp.	4 seeds
(e) Sicklepod -- Cassia obtusifolia	4 seeds
(f) Spurred Anoda -- Anoda cristata	4 seeds
(g) Velvetleaf -- Abutilon theophrasti	4 seeds
(h) Wild Onion and/or Wild Garlic -- Allium spp.	
Small grains or larger seeds	4 bulblets
Grasses and small seeded legumes	27 bulblets

(i) Morning-glory, wild, and giant Morning-glory -- Ipomoea spp. and <del>Calonyction</del> <del>muricatum</del>	8 seeds
(j) Corncockle -- Agrostemma githago	10 seeds
(k) Wild Radish -- Raphanus raphanistrum	12 seeds
(l) Bermudagrass -- Cynodon dactylon	27 seeds
(m) Canada thistle -- Cirsium arvense	27 seeds
(n) Bindweed -- Convolvulus spp.	27 seeds
(o) Cornflower -- Centaurea cyanus (known in North Carolina as Ragged Robin)	27 seeds
(p) Texas panicum -- Panicum texanum	27 seeds
(q) Bracted plantain -- Plantago aristata	54 seeds
(r) Buckhorn plantain -- Plantago lanceolata	54 seeds
(s) Dock -- Rumex crispus and/or obtusifolia	54 seeds
(t) Dodder -- Cuscuta spp.	54 seeds
(u) Giant foxtail -- Setaria faberi	54 seeds
(v) Horsenettle -- Solanum carolinense	54 seeds
(w) Quackgrass -- Agropyron repens	54 seeds
(x) Wild mustard et al -- Brassica spp.	54 seeds

Statutory Authority G.S. 106-277.9; 106-277.15.

#### .0005 PROHIBITED SALES

The sale of any agricultural seed containing any of the following is prohibited:

- (1) over two Nutsedge tubers per lb.; ~~in peanuts~~
- (2) over four Blessed Thistle, Cocklebur, Sandbur, Sicklegod, Spurred Anoda, Velvetleaf, Wild Radish or Wild Onion and/or Wild Garlic (in small grains or larger seeds);
- (3) over eight Wild Morning-glory and/or Giant Morning-glory (moonflower);
- (4) over ten ~~corncockle~~; Corncockle;
- (5) over 12 ~~wild radish~~; Wild Radish;
- (6) over 27 ~~wild onion~~ Wild Onion and/or ~~wild garlic~~ Wild Garlic (in grasses and small seeded legumes), Bermuda grass, Canada thistle, bindweed, cornflower, Bindweed, Cornflower, Texas panicum or ~~nutsedge~~ Nutsedge seeds;
- (7) over 54 ~~bracted plantain~~, buckhorn plantain, dock, dodder, giant foxtail, horsenettle, quackgrass or wild mustard et al. ~~Bracted Plantain~~, Buckhorn Plantain,

## ***PROPOSED RULES***

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Dock, Dodder, Giant Foxtail, Horsenettle, Quackgrass or Wild Mustard et al.

*Statutory Authority G.S. 106-277.9; 106-277.15.*

**.0006 PROHIBITED SALES: EXCESS OF 144 NOXIOUS WEED SEEDS**

The sale of any agricultural seed containing in excess of 144 noxious weed ~~seed but not otherwise restricted, seeds per pound of crop seed,~~ when occurring singly or in any combination, ~~per pound of crop seed,~~ is prohibited.

*Statutory Authority G.S. 106-277.15.*

**.0008 LESS THAN 70 PERCENT HARD SEED AND GERMINATION**

The sale of any agricultural seed having a total percentage of germination and hard seed of less than 70 percent is prohibited, with the following exceptions:

- (2) From March 21, 1986 until August 3, 1986, soybean seed which germinate from 60 percent to 69 percent may be sold if the actual germination percent is labeled, provided further that the words "Substandard Germination" must be shown on the label in eight point type or larger.

*Statutory Authority G.S. 106-277.9; 106-277.15.*

**.0009 PROHIBITED SALES: FLUE-CURED TOBACCO SEEDS**

The sale of seeds of any flue-cured tobacco variety, from any grower or distributor, which is not recorded with the ~~commissioner~~ Commissioner of Agriculture as required in 2 NCAC 48C .0013, is prohibited.

*Statutory Authority G.S. 106-277.15.*

**.0023 ANALYSIS FOR FARMERS OR SEEDMEN**

(a) The germination and purity analyses of agricultural and vegetable seeds shall be free to any person residing within the state. However, the ~~Director of the Seed Laboratory Program Administrator~~ shall have the privilege, with the approval of the ~~commissioner~~ Commissioner of Agriculture and the Board of Agriculture, of limiting the number of such free tests made annually, or during certain seasons, for any one person; also, of establishing a schedule of fees for seed testing of samples in addition to the number of free samples, and of designating the time or dates when such samples will be accepted for testing.

(b) Fees for biochemical (T.Z.) or other special tests for which Association of Official Seed Ana-

lysts' directions are given may be established by the ~~Director of the Seed Testing Division Program Administrator~~ with the approval of the ~~commissioner~~ Commissioner of Agriculture and the Board of Agriculture. Furthermore, the species to be accepted and the time and dates for each species to receive special tests may be similarly established.

(d) The ~~Director of the Seed Laboratory Program Administrator~~ shall have authority to accept special problem samples of other species for T.Z. tests and to refuse to analyze any sample of seeds submitted for testing that has not been reasonably well cleaned, or does not comply with these rules. ~~and Regulations.~~

*Statutory Authority G.S. 106-277.15.*

### **CHAPTER 53 - COTTON WAREHOUSE**

**.0001 DEFINITIONS**

As used in this Chapter, unless the context otherwise requires:

- (1) Act. The North Carolina Cotton Warehouse Act.
- (2) Department. The North Carolina Department of Agriculture.
- (3) License. A license issued under the Act by the Commissioner.

*Statutory Authority G.S. 106-451.8.*

**.0002 APPLICATION FORMS**

Applications for licenses shall be made to the Commissioner upon forms prescribed for the purpose and furnished by the Department, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Commissioner shall find to be necessary to the consideration of his application.

*Statutory Authority G.S. 106-451.8.*

**.0003 ALL FACILITIES TO BE LICENSED OR EXEMPTED**

All facilities within the same city or town used for the storage of cotton by an applicant for a warehouse license must qualify for a license and be licensed under the Act if the applicant is to be licensed to operate as a cotton warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Commissioner upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of nonlicensed facilities, there would be no likelihood of interchange or substitution of cotton stored in such

## **PROPOSED RULES**

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facilities with cotton stored in the licensed facilities. If all such facilities do not qualify for a license or for an exemption under this Rule, the applicant shall not be licensed under the Act as a cotton warehouseman in the city or town in which the facilities in question are located. Each applicant for a warehouse license must apply for a license covering all facilities operated by him for the storage of cotton within the same city or town or for exemption as provided in this Rule. If a licensed cotton warehouseman acquires any additional cotton storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No cotton storage facility acquired by a licensed cotton warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of cotton until it qualifies for license and is licensed or is exempted as provided in this Rule. If any one of the licensed cotton storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of cotton until the condition making it ineligible is removed or an exemption is granted as provided in this Rule. The use for the storage of cotton by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this Rule, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of cotton.

*Statutory Authority G.S. 106-451.8.*

### **.0004 GROUNDS FOR NOT ISSUING A LICENSE**

A license for the conduct of a warehouse, or any amendment to a license, under the rules in this Chapter, shall not be issued if it is found by the Commissioner, that the warehouse is not suitable for the proper storage of cotton; that the warehouseman does not possess a good reputation, or does not have a net worth of at least twenty-five thousand dollars (\$25,000), or is incompetent to conduct such warehouse in accordance with the Act and the rules in this Chapter; or that there is any other sufficient reason within the intent of the Act for not issuing such license. If all the facilities operated for the storage of cotton by the applicant within the same city or town are not to be licensed under the Act, the applicant shall not be licensed as a cotton warehouseman with respect to any of

such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in Rule .0003 of this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0005 FINANCIAL REQUIREMENTS**

(a) Each warehouseman conducting a warehouse licensed under the Act or for which application for a license under the Act has been made must maintain complete, accurate and current financial records which shall be available to the Commissioner for review or audit at the Commissioner's request.

(b) Each warehouseman conducting a warehouse for which application for license under the Act is made shall provide with this application and each warehouseman licensed annually, or more frequently if required, shall furnish to the Commissioner financial statements from the records required in Paragraph (a) of this Rule prepared according to generally accepted accounting principles. Such statements shall include but not be limited to:

- (1) Balance sheet;
- (2) Statement of income (profit and loss);
- (3) Statement of retained earnings; and
- (4) Statement of changes in financial position.

The chief executive officer for the warehouseman shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the warehouseman as of the date named and fairly represent the results of operations for the period named.

(c) Each warehouseman conducting a warehouse licensed under these rules shall have the financial statements required in Paragraph (b) of this Rule audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted. The Commissioner may, at his discretion, require an audited financial statement prepared by an independent certified public accountant. He may also, at his discretion, require an on-site examination and an audit by Department personnel. Audits and reviews by independent certified public accountants and independent public accountants specified in this Rule must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, must be furnished along with the financial statements. Licensees who cannot immediately meet these requirements may apply to the Commissioner for a temporary waiver of this provision. The Commissioner may grant such

waiver for a period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse which is licensed under this Chapter, or for which application for such a license has been made, must have and maintain:

- (1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least ten dollars (\$10.00) multiplied by the warehouse capacity in bales to a maximum of two hundred fifty thousand dollars (\$250,000); however, no person may be licensed or remain licensed as a warehouseman under this Chapter unless that person has allowable net assets of at least twenty-five thousand dollars (\$25,000). [Any deficiency in net assets above the twenty-five thousand dollar (\$25,000) minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with Rule .0011(c) of this Chapter]; and
- (2) Total current assets equal to or exceeding total current liabilities or evidence acceptable to the Commissioner that funds will be and remain available to meet current obligations.

(e) If a warehouseman is licensed or is applying for licenses to operate two or more warehouses under this Chapter, the maximum number of bales which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Commissioner, shall be considered in determining whether the warehouseman meets the net assets requirements specified in Paragraph (d) of this Rule.

(f) Subject to such terms and conditions as the Commissioner may prescribe and for the purposes of determining allowable assets and liabilities under Paragraphs (d) and (e) of this Rule:

- (1) Capital stock will not be considered a liability;
- (2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouseman to conform with Paragraphs (b) and (c) of this Rule may be allowed if:
  - (A) prepared by independent appraisers acceptable to the Commissioner; and
  - (B) the assets are fully insured against casualty loss.
- (3) Financial statements of a parent company which separately identifies the financial position of the warehouse as a wholly owned subsidiary and which meets the

requirements of Paragraphs (b), (c), and (d) of this Rule may be accepted by the Commissioner in lieu of the warehouseman meeting such requirements; and

- (4) Guaranty agreement from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Commissioner as meeting the requirements of Paragraphs (b), (c), and (d) of this Rule, if the parent company submits a financial statement which qualifies under this Rule.

(g) In case a state agency licensed or applying for a license as provided in the Act has funds of not less than five hundred thousand dollars (\$500,000) guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the net asset requirements of this Rule.

(h) In case a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in Rule .0011(b) of this Chapter, the certification may only be used to satisfy any deficiencies in assets above twenty-five thousand dollars (\$25,000).

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in Rule .0011(e) of this Chapter:

- (1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of Paragraphs (d), (1) and (2) of this Rule;
- (2) A deficiency in total allowable net and current assets as computed for Paragraphs (d), (1) and (2) of this Rule may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;
- (3) The deposit may be replaced or continued in the required amount from year to year; and
- (4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

(j) Nothing in these rules shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of Rule .0011(e) of this Chapter.

*Statutory Authority G.S. 106-451.8.*

## ***PROPOSED RULES***

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### **.0006 LICENSE SHALL BE POSTED**

Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in these rules, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.

*Statutory Authority G.S. 106-451.8.*

### **.0007 SUSPENSION OR REVOCATION OF WAREHOUSE LICENSES**

(a) The Commissioner may summarily suspend a license in accordance with G.S. 150B-3. The Commissioner may, after opportunity for hearing has been afforded in the manner prescribed in this Rule, suspend or revoke a license issued to a warehouseman when such warehouseman:

- (1) Does not have a net worth of at least twenty-five thousand dollars (\$25,000);
- (2) Has parted, in whole or in part, with his control over the licensed warehouse;
- (3) Is in process of dissolution or has been dissolved;
- (4) Has ceased to conduct such licensed warehouse;
- (5) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;
- (6) Has made unreasonable or exorbitant charges for services rendered;
- (7) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of cotton which is not covered by a license or an exemption as provided in Rule .0003 of this Chapter; or
- (8) Has in any other manner violated or failed to comply with any provision of the Act or the rules in this Chapter.

(b) Whenever any of the conditions mentioned in Subparagraphs (1) through (8) of this Rule shall come into existence, it shall be the duty of the warehouseman to notify the Commissioner immediately of the existing condition. Before a license is revoked or suspended (other than a summary suspension) for any violation of, or failure to comply with, any provision of the Act or of the rules in this Chapter, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Commissioner, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing

and apply for a hearing, an opportunity for which shall be afforded in accordance with G.S. 150B.

*Statutory Authority G.S. 106-451.8.*

### **.0008 RETURN OF SUSPENDED OR REVOKED WAREHOUSE LICENSE**

In case a license issued to a warehouseman terminates or is suspended or revoked by the Commissioner, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in Rule .0006 of this Chapter; or in the discretion of the Commissioner a new license may be issued.

*Statutory Authority G.S. 106-451.8.*

### **.0009 LOST OR DESTROYED WAREHOUSE LICENSE**

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.

*Statutory Authority G.S. 106-451.8.*

### **.0010 UNLICENSED WAREHOUSEMAN MUST NOT REPRESENT HIMSELF AS LICENSED**

No warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

*Statutory Authority G.S. 106-451.8.*

### **.0011 BOND REQUIRED: TIME OF FILING**

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Commissioner or his designated representative a bond either:

- (1) In the form of a bond containing the following conditions and such other terms as the Commissioner or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

"Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns op-

erating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of the North Carolina Cotton Warehouse Act and rules thereunder relating to the above-named products, then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and rules and contracts include obligations under any and all modifications of the Act, the rules, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This obligation shall be and remain in full force and effect for a minimum of one year beginning with the effective date and shall be considered a continuous bond thereafter until terminated as herein provided. The total liability of the surety is limited to the penal amount hereof for liabilities that accrue during the term hereof.

This obligation shall be and remain in full force and effect from date of issue until one hundred twenty (120) days after notice in writing of cancellation shall have been received by the Commissioner from the principal or surety. If said notice shall be given by the surety, a copy thereof shall be mailed on the same day to the principal. Cancellation of this bond and cancellation of any of its provisions shall not affect any liability accrued thereon at the time of said notice or which may accrue thereon during the one hundred twenty (120) days after such notice."

A bond in this form shall be subject to Rules .0005 and .0012 through .0015 of this Chapter; or

- (2) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Commissioner, established and maintained by the state, backed by the full faith and credit of the state, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and rules. A certificate of participation and coverage in such fund shall be furnished to the Commissioner annually. If administration or application of the fund shall change after being approved by the Commissioner, the Commissioner may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon

such revocation the licensed warehouseman then must comply with Subparagraph (1) of this Rule. Such certificate of participation shall not be subject to Rules .0012 and .0013 of this Chapter; or

- (3) In the form of a deposit with the Commissioner as security, United States bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Commissioner to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this Subparagraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to Rules .0005 and .0012 through .0015 of this Chapter.

*Statutory Authority G.S. 106-451.8.*

**.0012 AMOUNT OF BOND: ADDITIONAL AMOUNTS**

(a) The amount of the bond to be furnished by each warehouseman under the rules in this Chapter, shall be at the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Commissioner, but not less than twenty thousand dollars (\$20,000) nor more than two hundred and fifty thousand dollars (\$250,000); except as provided in Paragraphs (b) and (c) of this Rule.

(b) In case a warehouseman is licensed or applying for licenses to operate two or more warehouses in the same state, he may give a single bond meeting the requirements of the Act and the rules in this Chapter to cover all his warehouses within the state and shall be deemed to be one warehouse only for purposes of determining the amount of bond required under Paragraph (a) of this Rule.

(c) In case of a deficiency in net assets above the twenty-five thousand dollar (\$25,000) minimum required under Rule .0005(d)(1) of this Chapter, there shall be added to the amount of bond determined in accordance with Paragraph

## **PROPOSED RULES**

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(a) of this Rule an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Commissioner for a period of not less than two years to coincide with the period of any deposit of obligations under Rule .0011(c) of this Chapter. Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Commissioner by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation.

(d) If the Commissioner, or his designated representatives, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this Rule, a further amount to meet such conditions.

*Statutory Authority G.S. 106-451.8.*

### **.0013 AMENDMENT TO LICENSE**

In case an application is made under Rule .0002 of this Chapter for an amendment to a license and no bond previously filed by the warehouseman covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Commissioner that such amendment will be granted upon compliance by such warehouseman with the Act, file with the Commissioner, within the time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Commissioner, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the rules in this Chapter may be filed in lieu of a new bond.

*Statutory Authority G.S. 106-451.8.*

### **.0014 BOND REQUIRED EACH YEAR**

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Commissioner a bond meeting the terms and conditions as outlined in Rule .0011 of this Chapter. Such bond must be in the amount required by the Commissioner and approved by him or his designated representative. Failure to provide for or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

*Statutory Authority G.S. 106-451.8.*

### **.0015 APPROVAL OF BOND**

No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the rules in this Chapter until it has been approved by the Commissioner.

*Statutory Authority G.S. 106-451.8.*

### **.0016 FORM**

(a) Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of G.S. 106-451.19, embody within its written or printed terms the following:

- (1) The name of the licensed warehouseman and the designation, if any, of the warehouse;
- (2) The license number of the warehouse;
- (3) A statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws;
- (4) In the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship;
- (5) The tag number given to each bale of cotton in accordance with Rule .0031 of this Chapter;
- (6) A statement conspicuously placed, whether or not the cotton is insured, and if insured, to what extent, by the warehouseman, against loss or damage by fire, lightning and other risks;
- (7) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon;
- (8) A blank space designated for the purpose in which the grade and/or other classification may be stated; and
- (9) A statement to the effect that the weight was determined by a weigher licensed under the Act, except that if the weight is not so determined, as permitted in Rule .0038 of this Chapter, the receipt shall contain a statement to that effect.

(b) Every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: Provided, that nothing contained in this Rule shall prohibit a warehouseman from legally selling the cotton when his accrued storage and other

## **PROPOSED RULES**

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charges approach the current market value of the cotton.

(c) In addition to complying with Paragraphs (a) and (b) of this Rule, every negotiable receipt issued for cotton stored in a licensed warehouse shall embody within its written or printed terms a statement that the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners when such cotton is so classified.

(d) Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn in accordance with Rule .0067 of this Chapter, and shall be stated in the receipt in accordance with Rules .0064 through .0070 of this Chapter.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor".

(f) Licensed receipts issued to cover linters shall be clearly and conspicuously marked "Linters".

(g) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

*Statutory Authority G.S. 106-451.8.*

### **.0017 COPIES OF RECEIPTS**

(a) At least one actual, skeleton, or microfilm copy of all receipts shall be made, and all copies, except skeleton and microfilm copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy--Not Negotiable".

(b) A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(c) If copies are retained on microfilm, the warehouseman shall:

- (1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;
- (2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm record; and
- (3) Be ready at all times to provide, and immediately provide, at the expense of the

warehouseman, any facsimile enlargement of such microfilm copies which any authorized officers or agents of the Department may request.

*Statutory Authority G.S. 106-451.8.*

### **.0018 LOST OR DESTROYED RECEIPTS: BONDS**

(a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in Paragraph (b) of this Rule.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman:

- (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success; and
- (2) a bond in an amount double the value, at the time the bond is given, of the cotton represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Commissioner, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the state in which the warehouse is located, or at least two individuals who are residents of such state and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

*Statutory Authority G.S. 106-451.8.*

### **.0019 PRINTING OF RECEIPTS**

No receipt shall be issued by a licensed warehouseman unless it is:

- (1) in a form prescribed by the Commissioner; and
- (2) upon distinctive paper or card stock specified by the Commissioner;

## ***PROPOSED RULES***

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- (3) printed by a printer with whom the Department has a subsisting contract and bond for such printing; and
- (4) on paper manufactured by and procured from a manufacturer with whom the Department has a subsisting contract and bond for the manufacture of such paper, or on card stock distinctively tinted with fugitive ink by the printer in the manner prescribed by the contract under Subparagraph (3) of this Rule.

*Statutory Authority G.S. 106-451.8.*

### **.0020 PARTIAL DELIVERY OF COTTON**

If a warehouseman delivers a part only of a lot of cotton for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the rules in this Chapter for the undelivered portion of the cotton.

*Statutory Authority G.S. 106-451.8.*

### **.0021 RETURN OF RECEIPTS BEFORE DELIVERY OF COTTON**

Except as permitted by law or by the rules in this Chapter, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the Act until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a non-negotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written delivery order, properly signed, specifying by bale or tag number each bale to be delivered from any receipt or receipts. Before delivering, or upon delivery of, all the cotton covered by a non-negotiable warehouse receipt, the warehouseman may require the surrender of the receipt. The location where receipts are to be surrendered shall be a location within reasonable proximity of the warehouse where the cotton is stored or other location that would not interfere with enforcement of the Act and rules.

*Statutory Authority G.S. 106-451.8.*

### **.0022 OMISSION OF GRADE: NO COMPULSION BY WAREHOUSEMAN**

No licensed warehouseman shall, directly or indirectly by any means whatever, compel or attempt to compel the depositor of any cotton in his warehouse to request the issuance of a receipt omitting the statement of grade.

*Statutory Authority G.S. 106-451.8.*

### **.0023 INSURANCE: REQUIREMENTS**

(a) When requested in writing by the depositor of cotton in a licensed warehouse, or by the holder of the receipt covering such cotton, to insure such cotton against loss or damage by fire, lightning, and other risks, each licensed warehouseman shall secure in his own name such insurance under reporting forms of policies which automatically attach for the full value of such cotton, including daily changes of value through market fluctuations and changes in the quantity of such product from day to day, as soon as such cotton is placed in his legal custody, and he shall continue such insurance in effect so long as the cotton remains in his legal custody. Such insurance shall be covered by lawful policies issued by one or more insurance companies. Each warehouseman insuring cotton under the provisions of this Rule shall submit such reports to underwriters as may be required under the terms of such policies, and copies of such reports shall be submitted to the Department as it may require. If the warehouseman is unable to procure insurance to the extent requested, he shall, orally or by telegraph or by telephone, and at his own expense, immediately notify the person making the request of such fact. When insurance is not carried in the warehouseman's name, the receipt shall show that the cotton is not insured by the warehouseman. Nothing in this Rule shall be construed to prevent a licensed warehouseman from adopting a rule that he will insure all cotton stored in his warehouse, but if he elects to insure he shall accomplish such insurance through policies as specified in this Paragraph.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by Rule .0006 of this Chapter, and at such other place as the Commissioner may from time to time designate, a notice, stating briefly the conditions under which the cotton will be insured against loss or damage by fire, lightning, and other risks.

*Statutory Authority G.S. 106-451.8.*

### **.0024 PREMIUMS: INSPECTIONS: REPORTS**

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the rules in this Chapter, pay such premium, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

*Statutory Authority G.S. 106-451.8.*

## ***PROPOSED RULES***

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### **.0025 WAREHOUSEMAN TO COLLECT AND PAY OVER INSURANCE**

Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the rules in this Chapter, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.

*Statutory Authority G.S. 106-451.8.*

### **.0026 CARE OF COTTON IN LICENSED WAREHOUSE**

Each warehouseman shall at all times exercise such care in regard to cotton in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

*Statutory Authority G.S. 106-451.8.*

### **.0027 CARE OF OTHER COTTON AND OTHER COMMODITIES**

If, at any time, a warehouseman shall handle or store cotton otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cotton in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the rules in this Chapter. Nonlicensed cotton shall be kept separate from licensed cotton.

*Statutory Authority G.S. 106-451.8.*

### **.0028 RECORDS TO BE KEPT IN SAFE PLACE**

(a) Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued, and canceled receipts or microfilm copies of canceled receipts except that with the written consent of the Commissioner upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment he may keep such records, books, and papers in some other place of safety, approved by the Commissioner.

(b) Each canceled receipt or microfilm copy of each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is

canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Commissioner in particular cases to carry out the purposes of the Act.

(c) Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department.

(d) If microfilm copies of canceled receipts are to be retained in lieu of canceled receipts, the warehouseman shall:

- (1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;
- (2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm copy; and
- (3) Be ready at all times to provide, and immediately provide, at the expense of the warehouseman, any facsimile enlargement of such microfilm copies which any authorized officers or agents of the Department may request.

*Statutory Authority G.S. 106-451.8.*

### **.0029 WAREHOUSE CHARGES**

A licensed warehouseman shall not make any unreasonable, exorbitant, or discriminatory charge for services rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Department a copy of his rules, if any, and a schedule of the charges to be made by him if licensed. Effective at the beginning of any cotton season, a licensed warehouseman may change his rate of charges for storage and other services, and the new rates may apply to all cotton then in storage as well as cotton received thereafter. At or before the beginning of each season every licensed warehouseman shall file with the Department a copy of his rules, if any, and of his schedule of charges for the ensuing season. Should a licensed warehouseman wish to make changes in his rates to become effective at any time other than at the beginning of a season, he shall file with the Department an amended schedule showing the contemplated changes, accompanied by a statement setting forth the reasons therefor. No increase in the storage rate shown in such an amended schedule shall apply to cotton in storage at the time the changes become effective. A licensed warehouseman may demand payment of all accrued charges at the close of each cotton

## ***PROPOSED RULES***

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season. If, upon demand, the owner of the cotton refuses to pay such charges at the end of a season, the warehouseman may take such action to enforce collection of his charges as is permitted by the laws of the state in which the warehouse is located. Each licensed warehouseman shall keep a copy of his current rules and schedule of charges exposed conspicuously in the place prescribed by Rule .0006 of this Chapter and at such other place accessible to the public as the Commissioner may from time to time designate. For the purposes of this Rule the cotton season shall commence, with respect to each warehouse, at such time not later than September 1 of each year, as the operator of the warehouse shall select, and he shall notify the Department in writing not less than five days next preceding the date selected.

*Statutory Authority G.S. 106-451.8.*

### **.0030 BUSINESS HOURS**

(a) Each licensed warehouse shall be kept open for the purpose of receiving cotton for storage and delivering cotton out of storage every business day for a period of not less than six hours between the hours of 8:00 a.m. and 6:00 p.m., except as provided in Paragraph (b) of this Rule. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8:00 a.m. to 6:00 p.m.

(b) In case the warehouse is not to be kept open as required by Paragraph (a) of this Rule, the notice posted as prescribed in Paragraph (a) of this Rule shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cotton stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

*Statutory Authority G.S. 106-451.8.*

### **.0031 NUMBERED TAGS TO BE ATTACHED TO BALES**

Each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be ap-

proved by the Commissioner. The tags shall be attached in numerical sequence or any series of sequence clearly distinguishable from each other.

*Statutory Authority G.S. 106-451.8.*

### **.0032 ARRANGEMENT OF STORED COTTON**

(a) Each warehouseman shall store each bale of cotton for which a receipt under the Act has been issued so that the tag thereon, required by Rule .0031 of this Chapter is visible and readily accessible, except as provided in Paragraph (b) of this Rule, and shall arrange all other cotton in his licensed warehouse so as to permit an accurate check thereof.

(b) If any licensed warehouseman is tendered for storage cotton of same grade and staple and in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in lots without reference to visibility of all tags on all bales within any lot, the warehouseman may store such cotton of same grade and staple belonging to the same depositor in lots of not less than 25 bales nor more than 200 bales: Provided, however, that each bale entering into the lot must bear an individual identification tag, and each lot must be so stored that the number of bales within the lot may be accurately determined.

(c) An identification card or tag shall be attached by the warehouseman to each lot of cotton which shall show the lot number and the number of bales in the lot. The warehouseman shall also maintain an office record showing bale or tag number of each bale in the lot and the location of the lot in the warehouse. Each lot shall be so arranged as to be readily distinguishable from each and every other lot. When requested by a proper representative of the Department engaged in making an examination of the warehouse, the warehouseman shall tear or break down at his own expense such stacks or lots of cotton as the examiner deems necessary to a proper examination. Before any warehouseman undertakes to store in accordance with this Rule he shall submit a statement setting forth:

- (1) His reasons for desiring to avail himself of this Rule; and
- (2) The plan of storage he proposes to follow, and he shall secure prior permission from the Commissioner to practice such method of storage.

*Statutory Authority G.S. 106-451.8.*

### **.0033 SYSTEM OF ACCOUNTS**

Each warehouseman shall use for his licensed warehouse a system of accounts, approved for

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the purpose by the Department, which shall show for each bale of cotton the tag number mentioned in Rule .0031 of this Chapter, its weight, its class when its class is required to be, or is, ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Commissioner in particular cases to carry out the purposes of the Act.

*Statutory Authority G.S. 106-451.8.*

### **.0034 REPORTS**

Each licensed warehouseman shall, from time to time, when requested by the Commissioner, make such reports, on forms prescribed and furnished for the purpose by the Department, concerning the condition, contents, operation, and business of the warehouse as the Commissioner may require.

*Statutory Authority G.S. 106-451.8.*

### **.0035 CANCELED RECEIPTS: AUDITING**

Each warehouseman, when requested by the Department, shall forward his canceled receipts for auditing to the Department. For the purpose of this Rule, only such portion as the Department may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

*Statutory Authority G.S. 106-451.8.*

### **.0036 COPIES OF REPORTS TO BE KEPT**

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the rules in this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0037 INSPECTIONS AND EXAMINATIONS OF WAREHOUSES**

Each licensed warehouseman shall permit any officer or agent of the Department, authorized by the Commissioner for the purpose, to enter and inspect or examine, on any business day

during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this Rule.

*Statutory Authority G.S. 106-451.8.*

### **.0038 WEIGHING OF COTTON: WEIGHING APPARATUS**

(a) All cotton before being stored in a licensed warehouse, shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt; except that by agreement with the depositor, point of origin weights may be stated on the receipt for cotton tendered for storage in a lot the identity of which is to be preserved during storage and shipment from the warehouse, and for which a multiple bale receipt is to be issued: Provided, that if such lot is broken at the warehouse, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

(b) Each licensed warehouse shall be equipped with scales acceptable to the Department for weighing cotton into and out of the warehouse. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by an officer or agent of the Department designated by the Commissioner for the purpose. If the Department shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the Act and the rules in this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0039 LOOSE COTTON**

Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.

*Statutory Authority G.S. 106-451.8.*

### **.0040 EXCESS STORAGE**

(a) If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof as determined in accordance with Rule .0012 of this Chapter, such

warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper operation of the sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Commissioner of such excess storage, the reason therefor and the location thereof.

(b) A warehouseman who lacks space and desires to transfer at his own expense, identity preserved depositor stored cotton, for which receipts have been issued to another licensed warehouse may physically do so subject to the following terms and conditions:

- (1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward cotton deposited on an identity preserved basis with the written permission of the depositor under such terms and conditions as the Commissioner may prescribe;
- (2) For purposes of this Rule, a licensed warehouse means a warehouse operated by a warehouseman who holds an unsuspended, unrevoked license under the Act or the U.S. Warehouse Act for cotton or a warehouse operated by a warehouseman who holds an effective warehouse license for the public storage of cotton issued by a state that has financial, bonding and examination requirements for the benefit of all depositors at least equal to the requirements of this Rule;
- (3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight, in blocks not to exceed 200 bales. The receiving warehouse shall promptly issue a non-negotiable block receipt for each block attaching a copy of the corresponding Bills of Lading to each receipt and forward the receipt promptly to the transferring warehouseman. The receiving warehouseman will store each block intact, attach a header card showing the receipt number, number of bales and a copy of the Bill of Lading with the individual tag numbers. Such non-negotiable block receipts shall have printed or stamped in large bold outline letters diagonally across the face the words "NOT NEGOTIABLE". Receipts are not valid for collateral purposes. They shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The cotton covered by such receipts is not the property of either the receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose baled cotton was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto;
- (4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton. The bond amount need not be more than two hundred and fifty thousand dollars (\$250,000) unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman must not incur storage obligations that exceed the licensed capacity of the receiving warehouse;
- (5) The shipping warehouseman continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under Paragraph (b)(6) of this Rule, required to redeliver the cotton, upon demand, to the depositor or the depositor's transferee at the warehouse where the cotton was first deposited for storage;
- (6) The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouseman and the receiving warehouseman, elects to take delivery at the warehouse to which cotton was transferred under this Rule;
- (7) Nothing in this Rule diminishes the right of the owner of the cotton to receive or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;
- (8) Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this Rule shall be subject to the requirements for warehouse receipts specified elsewhere in these rules; and
- (9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, he must in accordance

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with Rule .0023 of this Chapter keep such cotton insured in his own name or transfer the cotton only to a warehouse where the cotton is fully insured.

*Statutory Authority G.S. 106-451.8.*

### **.0041 REMOVAL OF COTTON FROM STORAGE**

Except as may be permitted by the Act or the rules in this Chapter, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and endorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the Commissioner of such removal and the necessity therefor.

*Statutory Authority G.S. 106-451.8.*

### **.0042 STORAGE OF WET AND FIRE-DAMAGED COTTON**

A warehouseman shall not place any bale of cotton that is excessively wet in contact with any other cotton in the licensed warehouse. A warehouseman shall not store in the same compartment with cotton that has not been damaged by fire any cotton that has been damaged by fire until the risk of fire therein has passed and the fire-damaged cotton has been removed from the bale, and then he shall not store it in contact with cotton that has not been so damaged.

*Statutory Authority G.S. 106-451.8.*

### **.0043 COTTON HANDLING: STORAGE; INJURIES**

A warehouseman shall not handle or store cotton in such manner as will injure or damage it, or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise.

*Statutory Authority G.S. 106-451.8.*

### **.0044 FIRE LOSS TO BE REPORTED BY WIRE**

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Commissioner the occurrence of such fire and the extent of damage.

*Statutory Authority G.S. 106-451.8.*

### **.0045 SIGNATURES ON RECEIPTS TO BE FILED WITH DEPARTMENT**

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.

*Statutory Authority G.S. 106-451.8.*

### **.0046 SIGNS ON FIELD WAREHOUSES**

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following:

- (1) the name and license number of the licensee,
- (2) the name of the warehouse,
- (3) whether the warehouseman is owner or lessee, and
- (4) the words "Public Warehouse".

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the rules in this Chapter subject to the approval of the Department.

(d) Immediately upon the expiration or suspension or revocation of a license all signs required under this Rule shall be removed from the warehouse.

(e) No sign other than that required by this Rule shall remain on a licensed warehouse.

*Statutory Authority G.S. 106-451.8.*

### **.0047 CERTIFICATES TO BE FILED WITH WAREHOUSEMAN**

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. The licensed warehouseman shall also keep a copy of each

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Form A memorandum and Form C certificate issued by a board of cotton examiners which forms a basis of any receipt issued by the warehouseman. All certificates and memoranda within this Rule shall be retained in the records of the licensed warehouseman for a period of one year after December 31 of the year in which the receipt based on such certificates or memoranda is canceled.

*Statutory Authority G.S. 106-451.8.*

### **.0048 DRAWING OF SAMPLES**

Each warehouseman shall have in his employ at all times one or more licensed samplers whose duty it shall be to draw samples from any cotton stored or to be stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn. When directed by the Commissioner such requests shall be in writing. Such samplers shall perform their duties under the supervision and at the direction of the licensed warehouseman and the samples shall be drawn in accordance with Rule .0068 of this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0049 SAMPLES: DRAWING AND MARKING: HOW**

All samples drawn from cotton in the custody of a licensed warehouseman for storage in a licensed warehouse shall be drawn by licensed samplers in the employ of the licensed warehouseman and at his direction and under his supervision. Each sample shall be appropriately marked to show the tag number of the bale of cotton from which it was drawn and the date of sampling. A record of the sampling, including the written request, if any, of the owner of the cotton or the person having a legal right to have such cotton sampled, shall be kept by the licensed warehouseman as a part of the warehouse records, for a period of one year after December 31 of the year in which such cotton is removed from the warehouse.

*Statutory Authority G.S. 106-451.8.*

### **.0050 SAMPLER'S; CLASSIFIER'S; AND WEIGHIER'S APPLICATIONS**

(a) Applications for licenses to sample, classify and/or weigh cotton under G.S. 106-451.14 shall be made to the Commissioner on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified

by him, under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by:

- (1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which cotton sought to be sampled, classified and/or weighed under such license is or may be stored;
- (2) A statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose;
- (3) Satisfactory evidence that he is competent to sample, classify and/or weigh cotton;
- (4) A statement by the applicant that he agrees to comply with and abide by the terms of the Act and the rules in this Chapter so far as the same may relate to him; and
- (5) Such other information as the Commissioner may deem necessary.

Provided, that when an application for a license to classify cotton is filed by a person who does not intend to classify cotton for any particular licensed warehouseman but who does intend to classify cotton stored or to be stored in a licensed warehouse and to issue class certificates therefor, as provided for by the Act and the rules in this Chapter, independent of the warehouse receipts issued to cover such cotton, it shall not be necessary to furnish such statement as is required in this Paragraph.

(c) For the purpose of classifying cotton under the rules in this Chapter, each licensed classifier who holds an unsuspended or unrevoked license under the Cotton Standards Act of March 4, 1923, and regulations thereunder to classify cotton and certificate the grade thereof shall be deemed competent and a license may be issued to him under the Act upon furnishing the information required by Paragraph (b) of this Rule.

(d) The applicant shall at any time furnish such additional information as the Commissioner shall find to be necessary to the consideration of his application.

(e) A single application may be made by any person for a license as a sampler, classifier and weigher upon complying with all the requirements of this Rule.

*Statutory Authority G.S. 106-451.8.*

### **.0051 EXAMINATION OF APPLICANT**

Each applicant for a license as a sampler, classifier and/or weigher and each licensed sampler, classifier and/or weigher shall, whenever re-

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quested by an authorized agent of the Department designated by the Commissioner, for the purpose, submit to an examination or test to show his ability to properly sample, classify or weigh cotton, as the case may be, and shall also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used by him.

*Statutory Authority G.S. 106-451.8.*

### **.0052 POSTING OF LICENSE**

Each licensed classifier shall keep his license conspicuously posted in the office where all or most of the classifying is done, and each licensed sampler and or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Department.

*Statutory Authority G.S. 106-451.8.*

### **.0053 DUTIES OF SAMPLER: CLASSIFIER AND WEIGHER**

Each licensed classifier or weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in a licensed warehouse to which his license applies, if such cotton is offered to him under such conditions as permit the proper performance of such functions: except that no class or weight certificate need be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination thereof. Each licensed sampler shall sample cotton stored or to be stored in a licensed warehouse for which he holds a license, in accordance with Rule .0048 of this Chapter. Each licensed sampler, classifier, and weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No class or weight certificate shall be issued under the Act for cotton not in the custody of a licensed warehouseman for purposes of storage in a licensed warehouse, nor shall cotton not in the custody of such a warehouseman for such purpose be sampled by a licensed sampler acting as such.

*Statutory Authority G.S. 106-451.8.*

### **.0054 CLASS CERTIFICATES: FORM**

(a) Each class certificate issued under the Act by a licensed classifier shall be in a form approved for the purpose by the Commissioner,

and shall embody within its written or printed terms:

- (1) The caption "Cotton class certificate";
- (2) Whether it is an original, a duplicate, or other copy;
- (3) The name and location of the licensed warehouse in which the cotton is or is to be stored;
- (4) The date of the certificate;
- (5) The location of the cotton at the time of classification;
- (6) The identification of each bale of cotton by the tag number given to the bale in accordance with Rule .0031 of this Chapter or if there be no such tag number by other marks or numbers;
- (7) The grade or other class, except length of staple, of each bale of cotton covered by the certificate, in accordance with Rules .0064 through .0069 of this Chapter, as far as applicable, and the standard or description in accordance with which the classification is made;
- (8) A blank space designated for the purpose in which the length of staple may be stated;
- (9) That the certificate is issued by a licensed classifier under the Act and rules thereunder; and

(10) The signature of the licensed classifier.

In addition, the class certificate may include any other matter not inconsistent with the Act or the rules in this Chapter, provided the approval of the Department is first secured.

(b) Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classers under the United States Cotton Standards Act (7 U.S.C. 51 et seq.) shall be deemed sufficient for the purposes of the Act and the rules in this Chapter, if the samples on which they are based were drawn in accordance with applicable requirements of Rule .0067 of this Chapter, and, in case of a class certificate issued by such a licensed classer, if the classer holds an unsuspended and unrevoked license under each of said acts.

*Statutory Authority G.S. 106-451.8.*

### **.0055 WEIGHT CERTIFICATES: FORM**

Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Commissioner, and shall embody within its written or printed terms:

- (1) The caption "Cotton weight certificate";
- (2) Whether it is an original, a duplicate, or other copy;

- (3) The name and location of the licensed warehouse in which the cotton is or is to be stored;
- (4) The date of the certificate;
- (5) The location of the cotton at the time of weighing;
- (6) The identification of each bale of cotton by the tag number given to the bale in accordance with Rule .0031 of this Chapter or if there be no such tag number by other marks or numbers;
- (7) The gross, or net and tare, weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition;
- (8) That the certificate is issued by a licensed weigher under the Act and the rules thereunder; and
- (9) The signature of such licensed weigher.

In addition, the weight certificate may include any other matter not inconsistent with the Act or the rules in this Chapter, provided the approval of the Department is first secured.

*Statutory Authority G.S. 106-451.8.*

**.0056 COMBINED CLASS AND WEIGHT CERTIFICATES**

The class and weight of any cotton, ascertained by a licensed classifier and a licensed weigher, may be stated on a certificate meeting the combined requirements of Rules .0054 and .0055 of this Chapter if the form of such certificate shall have been approved for the purpose by the Commissioner.

*Statutory Authority G.S. 106-451.8.*

**.0057 COPIES OF CERTIFICATES TO BE KEPT**

Each licensed classifier and each licensed weigher shall keep for a period of one year in a place accessible to interested persons a copy of each certificate issued by him under the rules in this Chapter and shall file a copy of each such certificate with the warehouse in which the cotton covered by the certificate is stored.

*Statutory Authority G.S. 106-451.8.*

**.0058 LICENSEES TO PERMIT AND ASSIST IN INSPECTION**

Each licensed sampler, classifier, and/or weigher shall permit any officer or agent of the Department authorized by the Commissioner for the purpose, to inspect or examine, on any business

day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the rules in this Chapter, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in Rule .0037 of this Chapter as far as any such inspection or examination relates to the performance of the duties of such licensed sampler, classifier, and/or weigher under the Act and this Rule.

*Statutory Authority G.S. 106-451.8.*

**.0059 REPORTS**

Each licensed sampler, classifier, and/or weigher shall, from time to time, when requested by the Commissioner, make reports, on forms furnished for the purpose by the Department, bearing upon his activities as such licensed sampler, classifier, and/or weigher.

*Statutory Authority G.S. 106-451.8.*

**.0060 LICENSES: SUSPENSION OR REVOCATION**

(a) The Commissioner may summarily suspend a license in accordance with G.S. 150B-3. The Commissioner may, after opportunity for hearing has been afforded in the manner prescribed in G.S. 150B, suspend or revoke a license issued to a licensed sampler, classifier, and/or weigher when such licensed sampler, classifier, and/or weigher:

- (1) has ceased to perform services as such sampler, classifier, and/or weigher, or
- (2) has in any other manner become incompetent or incapacitated to perform the duties of such licensed sampler, classifier, and/or weigher.

(b) As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned under Subparagraphs (1) and (2) of this Rule exist, it shall be the duty of such warehouseman to notify, in writing, the Commissioner. Before the license of any licensed sampler, classifier, and/or weigher is permanently suspended or revoked pursuant to G.S. 150B, such licensed sampler, classifier, and/or weigher shall be furnished by the Commissioner a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with G.S. 150B.

*Statutory Authority G.S. 106-451.8.*

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### **.0061 SUSPENDED OR REVOKED LICENSES: RETURN: TERMINATION OF LICENSE**

(a) In case a license issued to a sampler, classifier, and/or weigher is suspended or revoked by the Commissioner, such license shall be returned to the Commissioner. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, and it shall be returned to the licensed sampler, classifier, and/or weigher to whom it was originally issued, and it shall be posted as prescribed in Rule .0052 of this Chapter.

(b) Any license issued, under the Act and the rules in this Chapter, to a sampler, classifier, and/or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such sampler, classifier, and/or weigher shall be returned to the Commissioner. In case such license shall apply to other warehouses, the Commissioner shall issue to him a new license, omitting the names of the warehouses covering which licenses have been revoked. Such new license shall be posted as prescribed in Rule .0052 of this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0062 LOST OR DESTROYED LICENSES**

Upon satisfactory proof of the loss or destruction of a license issued to a licensed sampler, classifier, and/or weigher, a duplicate thereof may be issued under the same number.

*Statutory Authority G.S. 106-451.8.*

### **.0063 UNLICENSED CLASSIFIERS AND WEIGHERS**

No person shall in any way represent himself to be a sampler, classifier, and/or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.

*Statutory Authority G.S. 106-451.8.*

### **.0064 STATEMENT OF CLASS**

Whenever the grade or other class of cotton is required to be, or is, stated for the purpose of the Act or the rules in this Chapter it shall be stated in accordance with Rules .0064 through .0069 of this Chapter as far as applicable.

*Statutory Authority G.S. 106-451.8.*

### **.0065 OFFICIAL COTTON STANDARDS OF THE UNITED STATES**

The official cotton standards of the United States, established and promulgated under the United States Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51-56), within their scope, are hereby adopted by reference in accordance with G.S. 150B-14(c), as the official cotton standards for the purposes of the Act and the rules in this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0066 DEFECTIVE COTTON: DESIGNATION: TERMS DEFINED**

(a) Cotton that:

- (1) Because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary,
- (2) Is below the grade of Good Ordinary,
- (3) Is below the grade of Low Middling, if tinged,
- (4) Is below the grade of Middling, if stained,
- (5) Is linters,
- (6) Is less than seven-eighths of an inch in length of staple,
- (7) Is of perished staple,
- (8) Is of immature staple,
- (9) Is gin cut,
- (10) Is reginned,
- (11) Is repacked,
- (12) Is false packed,
- (13) Is mixed packed, or
- (14) Is water packed, shall be designated as such.

In the case of Paragraph (a)(I) of this Rule the particular extraneous matter or irregularities or defects shall be stated.

(b) If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value shall be determined and stated.

(c) For the purposes of this Rule, the following terms shall be construed, respectively, to mean:

- (1) Cotton of perished staple. Cotton that has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.
- (2) Cotton of immature staple. Cotton that has been picked and baled before the fiber

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has reached a normal state of maturity, resulting in a weakened staple of inferior value.

- (3) Gin-cut cotton. Cotton that shows damage in ginning through cutting by the saws, to an extent that reduces its value more than two grades.
- (4) Reginned cotton. Cotton that has passed through the ginning process more than once and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.
- (5) Repacked cotton. Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of cotton from two or more smaller bales or parts of bales.
- (6) False packed cotton. Cotton in a bale:
  - (A) containing substances entirely foreign to cotton,
  - (B) containing damaged cotton in the interior with or without any indication of such damage upon the exterior,
  - (C) composed of good cotton upon the exterior and decidedly inferior cotton in the interior in such manner as not to be detected by customary examination--that is, a plated bale, or
  - (D) containing pickings or linters worked into the bale.
- (7) Mixed packed cotton. Cotton in a bale which, in the samples drawn therefrom, shows:
  - (A) a difference of three or more grades, or
  - (B) a difference of three or more color graduations, or
  - (C) a difference of two or more grades and two or more color graduations, or
  - (D) a difference in length of staple of one-eighth inch or more.
- (8) Water packed cotton. Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.

*Statutory Authority G.S. 106-451.8.*

### **.0067 CLASS BASED ON INSPECTION AND SAMPLE**

Whenever the grade or other class of cotton is required to be, or is, stated by a warehouseman or a classifier or board of cotton examiners for the purposes of the Act or the rules in this Chapter, it shall be based upon a careful in-

spection of and a sample properly drawn from the cotton. Samples submitted to a board of cotton examiners for issuance of Form A memorandums and samples from which classification is to be determined by licensed classifiers for purposes of the Act and the rules in this Chapter shall be drawn by samplers licensed under the Act and said rules and in accordance with Rule .0068 of this Chapter.

*Statutory Authority G.S. 106-451.8.*

### **.0068 SAMPLES**

Each sample shall be approximately six ounces in weight, not less than three ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn. Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet these requirements may be rejected.

*Statutory Authority G.S. 106-451.8.*

### **.0069 LOWER GRADE (OF TWO SAMPLES) TO DETERMINE CLASSIFICATION**

If a sample drawn from one portion of a bale is lower in grade or shorter in length than one drawn from another portion of such bale, the classification of the bale shall be that of the sample showing the lower grade or shorter length.

*Statutory Authority G.S. 106-451.8.*

### **.0070 ACCESS TO OFFICIAL COTTON STANDARDS**

Each licensed warehouseman and each licensed classifier shall keep himself provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such parts thereof as the Commissioner may deem necessary for use in the locality in which the licensed warehouse is located.

*Statutory Authority G.S. 106-451.8.*

### **.0071 BONDS REQUIRED**

Every person applying for a license, or licensed, under Section 9 of the Act, shall, as such, be subject to all portions of these rules so far as they may relate to warehousemen. In case there is a law of any state providing for a system of warehouses owned, operated, or leased by such state, a person applying for a license under the Act, to accept the custody of cotton and to store the same in any of said warehouses may, in lieu of a

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bond or bonds, complying with Rules .0011 and .0012 of this Chapter, file with the Commissioner a single bond meeting the requirements of the Act and rules in such form, and in such amount not less than five thousand dollars (\$5,000), as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cotton and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any renewals or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the state, and its liability with respect to such warehouses. If the Commissioner shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

*Statutory Authority G.S. 106-451.8.*

### **.0072 INFORMATION OF VIOLATIONS**

Every person licensed under the Act shall immediately furnish the Department any information which comes to the knowledge of such person tending to show that any provision of the Act or the rules in this Chapter has been violated.

*Statutory Authority G.S. 106-451.8.*

### **.0073 PROCEDURE IN HEARINGS**

Hearings under the Act or the rules in this Chapter shall be conducted in accordance with G.S. 150B.

*Statutory Authority G.S. 106-451.8.*

### **.0074 ONE DOCUMENT AND ONE LICENSE TO COVER SEVERAL PRODUCTS**

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Commissioner.

*Statutory Authority G.S. 106-451.8.*

### **.0075 ASSETS AND BOND: COMBINATION WAREHOUSES**

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Commissioner in ac-

cordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

*Statutory Authority G.S. 106-451.8.*

## **TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management (Environmental Management Commission) intends to amend rule cited as 15 NCAC 2B .0316.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 7:00 p.m. on June 15, 1989 at Jenkins Auditorium, East Carolina University, Greenville, NC.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, data, statements and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented orally at the hearing. So that all persons desiring to speak may do so, statements may be limited at the discretion of the hearing officer. All persons making oral presentations are requested to submit a written copy to the hearing officer. For more information, contact David B. Williams, Division of Environmental Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.*

## **CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

### **SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING**

#### **SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

##### **.0316 TAR-PAMILICO RIVER BASIN**

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;

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- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

*Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the NRCD - Division of Coastal Management intends to amend rules cited as 15 NCAC 7B .0201 - .0204, .0207, .0403, .0405 and .0506.*

*The proposed effective date of this action is October 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on June 21, 1989 at NRCD Washington Field Office, 1424 Carolina Avenue, Washington, NC 27889.*

*Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Management Division will receive written comments up to the date of the hearing. Any persons desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by contacting Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2293.*

### **CHAPTER 7 - COASTAL MANAGEMENT**

#### **SUBCHAPTER 7B - LAND USE PLANNING GUIDELINES**

##### **SECTION .0200 - LAND USE PLAN**

###### **.0201 INTRODUCTION**

(c) Small municipal governments that are not experiencing significant or rapid growth should develop a sketch Land Use plan or update. Sketch plans must contain the four minimum requirements called for in Paragraph (d) of this

Rule, however; sketch plans should be abbreviated and easily read and understood by its citizens. Sketch plans can be produced in a foldout format with the narrative on one side and graphics such as the existing land use and land classification maps on the other side. The intent of a sketch plan is a document that meets the substantive need of the small local government, but does not burden the community with a large, cumbersome, unusable document.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

###### **.0202 DATA COLLECTION AND ANALYSIS**

(a) Establishment of Information Base.

(1) The data collection and analysis items detailed in this Rule are designed to establish the information base necessary to make policy choices about future land use and development in the community. They have been formulated so as not to place unnecessary burden on the local planning resources. The requirements can generally be fulfilled by utilizing existing local plans and studies including the previous Land Use Plan Update, as well as information provided by regional planning bodies and state agencies. Those counties and municipalities desiring to be more detailed or comprehensive than these guidelines suggest are encouraged to do so.

(2) The process suggested by the data collection and analysis requirements of this Rule begins with an examination of the present situation. An estimate is then made of what land use demands are likely to be placed on the planning area during the ensuing, not to exceed, ten year period, based upon population and economic projections and upon local policies. The implications of the projected future demands are then examined and balanced against the suitability of the lands within the local government's jurisdiction for development and the capability of government to provide basic public services and facilities. Each local government should analyze how anticipated development will affect the need for services such as water, sewer, fire and police protection, schools, etc. Particular attention should be paid to situations where local government does not provide water or sewer and these services are provided privately. In the absence of public systems, potable water availability and soils suitability for sewage

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disposal etc. must be considered. This analysis should be linked closely with policy development and land classification in each plan. This analysis of the capability of the local government to provide the anticipated services and the suitability of lands for projected growth should be clearly reflected in the land use policy and land classification sections in the plan.

- (3) The summary of the data collection and analysis prepared as part of the land use plan shall indicate the manner in which the data was assembled and analyzed along with a statement of the major conclusions. This summary shall also provide an index showing where more detailed information can be found in technical appendices to the plan. Compliance with this element requires each local government to analyze how effectively it has implemented its policies as contained in its current plan of record. This evaluation should include statements as to what improvements the local government intends to make in this plan update. This evaluation should occur at the beginning of the planning process so as to provide a foundation upon which to build new policies as the plan update is developed. This analysis should include the number of subdivisions and lots approved and building permits issued since the last plan.

(b) Present Conditions.

- (2) Existing Land Use. Existing land use shall be mapped and analyzed, with particular attention given to:
- (A) significant land and water use compatibility problems;
  - (B) major problems that have resulted from unplanned development, and that have implications for future land and water use;
  - (C) an identification of areas experiencing or likely to experience changes in predominant land uses including agricultural and forestry land being converted to other uses;
  - (D) during plan development local governments are encouraged to use small scale, high detail maps. These maps should be retained for local government use. Maps included in the land use plans should be of an appropriate scale and quality to be easily interpreted and should contain a synthesis of data gathered during plan development. Existing water conditions including DFM stream classifications, the location of primary and secondary nursery

areas, ORW's and other features such as oyster and clam beds, eel grass etc. should be included in this map synthesis.

- (3) Current Plans, Policies and Regulations. This element shall contain:

(B) a listing and brief description of the means for enforcement of all existing local land use regulations; the following regulations shall be discussed, where applicable: zoning, subdivision, floodway, building, septic tank, historic district, nuisance, dune protection, sedimentation, and environmental impact ordinances, codes or regulations, stormwater management plans, mobile home park, group housing and PUD ordinances. The local government should also review the relationship of its local ordinances with its land classification map and local policies and identify and correct conflicts. Specific permitted land uses, densities and lot sizes should be discussed.

(c) Constraints; Land Suitability. An analysis shall be made of the general suitability of the undeveloped lands as identified on the existing land use map within the planning area for development, with consideration given to the following factors: physical limitations for development, fragile areas, and areas with resource potential. These factors shall be analyzed, and where possible mapped, based upon the best information available. The major purpose of this analysis is to assist in preparing the land classification map.

- (1) Physical Limitations for Development.

An identification shall be made of areas likely to have conditions making development costly or causing undesirable consequences if developed. The following areas shall be identified:

(A) hazard areas, including man-made hazards (for example, airports, tank farms for the storage of flammable liquids, nuclear power plants) and natural hazards (for example, ocean erodible areas, and flood hazard areas below 5 feet mean high water line that would be susceptible to sea level rise); this identification shall include the specific sources of the data such as flood insurance maps, county soils maps, etc.;

(B) areas with soil limitations, including the following:

(i) areas presenting hazards for foundations such as non-compacting soils;

(D) areas where the predominant slope exceeds 12 percent or areas with a high erosion potential where bulkheads may be constructed in the future.

(2) Fragile Areas. An identification shall be made of those areas which could easily be damaged or destroyed by inappropriate or poorly planned development. The following shall be considered (as defined in 15 NCAC 7H): coastal wetlands; sand dunes along the outer banks; ocean beaches and shorelines; estuarine waters and estuarine shorelines; public trust waters; complex natural areas; areas that sustain remnant species; areas containing unique geologic formations; registered natural landmarks; and others such as wooded swamps, prime wildlife habitats, scenic and prominent high points, archeologic and historic sites; etc. Special emphasis should be given to other fragile areas such as maritime forests, "404" wetlands, lands identified through the U.S. Fish and Wildlife National Wetlands Inventory, areas identified through NRCD's Natural Heritage Program and other areas which are not offered protection by existing regulations.

(d) Constraints; Capacity of Community Facilities. An identification shall be made of Carrying Capacity Analysis. An examination of the following indicators should be made to assist the local government in evaluating its ability to provide basic community services to meet anticipated demand, as well as pointing out deficiencies which will need future attention and efforts:

- (1) existing water and sewer service areas including private systems;
- (2) the design capacity of the existing water treatment plant, sewage treatment plant, schools, landfill or other solid waste disposal facility, police and fire protection capability, public administrative ability, and primary roads, bridges and general transportation system adequacy;
- (4) the capacity of community facilities to supply existing and anticipated demand. Counties containing barrier islands and municipalities therein shall use the peak seasonal population as a basis for public facility planning and policy development. Past summer season usage data should be used in predicting future needs and demand.

(e) Estimated Demand:

- (1) Population and Economy. A population estimate for the upcoming ten years shall be made and used as the basis for determining land and facilities demand and for classifying land areas. Ten year population projections will be provided by the Department of Administration for use in

making population estimates. Projections will be provided for counties and those cities and towns having a population greater than 2,500. Accurate projections for those areas with a population of less than 2,500 are not available and must be developed by the local planning unit. The projections provided by the Department of Administration are based on prior trends with annual updates. The local government may wish to use these trend projections as its population estimates or to modify them to include additional factors such as:

(C) foreseeable social and economic change to include an evaluation of the proportions of the local economy devoted to tourism, retail, construction and professional trades to illustrate the changes occurring.

The Department of Administration population model is capable of taking into account some of these considerations and should be used where possible when such further refinement is desired. If such refinement causes a significant difference between the Department of Administration population projections and the local population estimate, the community shall explain the reason for the difference. The Coastal Resources Commission must approve such an estimate.

(3) Community Facilities Demand. Consideration shall be given to new facilities which will be required by the estimated population growth and the densities at which the land is to be developed. Features such as landfills, road widenings, bridges, etc. should be considered in order to meet the intent of this item.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0203 POLICY STATEMENTS**

(a) The plan shall contain statements of local policy on those land use issues which will affect the community during the ten year planning period. The issues shall include but not be limited to: resource protection, resource production and management, economic and community development, continued public participation and storm hazard mitigation. Local governments should ensure to the greatest extent possible that there is consistency among individual policies developed in each policy category. Particular attention should be given to individual policies in the resources protection, resources production

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and economic and community development categories. For example, a resource protection policy to "protect water quality in surface waters" should be reflected in economic and community development policies which would also affect surface water quality. Local governments may include the analysis of previous policy effectiveness called for in Rule .0202(3)(A)(i) of this Section as a preface to this policy section.

(1) Resource Protection:

- (B) As a minimum, the plan shall contain policy statements on the following resource protection issues (if relevant):
- (ii) specific local resource development issues relative to areas of environmental concern designated under 15 NCAC 7II and land uses and development densities in proximity to ORWs;
  - (iii) other hazardous or fragile land areas, including but not limited to freshwater swamps and marshes, maritime forests, pocosins and 404 wetlands, ORW areas, shellfishing waters, water supply areas and other waters with special values, cultural and historic resources, and manmade hazards. This discussion may be in terms of the nomination procedure for areas of environmental concern under Section .0500 of 15 NCAC 7II; this discussion should also include local policy development to protect those fragile areas which are not covered by existing regulations and these policies can also be reflected in land classification and local ordinance;
  - (v) means of protection of potable water supply;
  - (vi) the use of package treatment plants for sewage treatment disposal can also be listed under economic and community development policies, discussion of package treatment plants should also include consideration of requirements for the ongoing private operation and maintenance of the plant(s) and provisions for assumption of the plant(s) into the public system should the private operation fail;
  - (viii) marina and floating home development, dry stack storage facilities for boats associated either with or independent of marinas;
  - (ix) industrial impacts on fragile areas; and
  - (xi) restriction of development within areas up to five feet above mean high water that might be susceptible to sea level rise and wetland loss;

- (xii) upland excavation for marina basins; and
- (xiii) means of protecting existing marshes from sea level rise other than by bulkhead installation.

(2) Resource Production and Management:

- (B) As a minimum, the plan shall contain policy statements on the following resource production and management issues (if relevant):
- (iv) commercial and recreational fisheries; including nursery and habitat areas, ORW's, and trawling activities in estuarine waters;
  - (v) off-road vehicles; and
  - (vi) residential and commercial land development, peat or phosphate mining and industrial impacts on any resource; residential, commercial and industrial land development impacts on any resources; and
  - (vii) peat or phosphate mining's impacts on any resource.

(3) Economic and Community Development. To include a basic statement as to the community attitude toward growth:

- (B) As a minimum, the plan shall contain policy statements on the following economic and community development issues (if relevant):
- (iv) redevelopment of developed areas including relocation of structures endangered by erosion, paying particular attention to the extent existing zoning allows more intense redevelopment than current uses and anticipated future trends;
  - (vii) energy facility siting and development include specific reference to electric generating plants both inshore and OCS exploration or development to address the possibilities of refineries, storage, transshipment and the potential negative environmental effect from blowouts, spills etc.;
  - (x) types, densities, location; units per acre etc. of anticipated residential development and services necessary to support such development including the setting aside of or identification of sites for future landfill use.

- (C) In addition to specific policy statements on issues listed in this Paragraph, local governments should pay particular attention in policy development to observed land use trends such as: in inland areas significant changes from lower intensity to higher intensity uses, agricultural and for-

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est uses to residential or commercial, or from forest to agricultural. Land use trends in estuarine, river and sound areas include residential waterfront development and increases in density of waterfront residential uses; marina or dry stack facility development and expansion, floating homes and public and private services provided to support higher intensity uses and the cumulative impact of such trends on water quality. Oceanfront and barrier islands should address the adequacy of existing and planned transportation routes, bridges, water and sewer systems, and other carrying capacity features and local ordinances to accommodate expected and potential changes in land use intensities and overall growth.

- (4) Continuing Public Participation. Local governments shall discuss the means by which public involvement in planning matters the land use plan update will be encouraged. The public involvement policies shall be consistent with the concepts set forth in .0207 of this Section. As a minimum, the plan shall address the following public participation issues:

- (i) description of means to be used for public education on planning issues; and
- (ii) description of means to be used for continuing public participation in planning; and
- (iii) description of means to be used for obtaining citizen input in developing land use plan policy statements.

- (5) The Coastal Resources Commission in consultation with the local governments, may specify other specific issues that must be addressed in particular local land use plans and the local government is also encouraged to develop policies on issues that are of particular local importance.
- (6) Storm Hazard Mitigation, Post-Disaster Recovery and Evacuation Plans:

(A) Storm Hazard Mitigation policies which include the following elements are required as part of the land use plan: Coast Storm hazard mitigation policies are required as part of the land use plan. The purpose of these policies is to guide the development of the community so that the risk of damage to property and the threat of harm to human life from coastal storms is kept to a minimum level.

- (i) A composite hazards map and brief narrative description of hazardous areas located within the planning jurisdiction

including all AEC'S, flood zones, and other hazard areas of importance. The map and description shall be prepared in accordance with the principles outlined in "Before the Storm: Managing Development to Reduce Hurricane Damages"; McElvea, Brower and Godschalk, 1982. As a part of the plan, the following studies must be done:

- (I) A description of the effects of coastal storms the community will be subjected to; e.g. high winds, storm surge, flooding, wave action, erosion, etc.
- (II) A composite hazards map using the best available information including NFIP maps and data, the Eastern N.C. Evacuation Study, AEC data, etc. showing the hazardous areas within the planning jurisdiction; each hazardous area should be described in terms of type of hazard that it's likely to be subjected to and the relative severity of risk present.
- (III) An existing land use inventory for each of the most hazardous areas which will portray the amount of existing development at risk for each area. The intent of this provision can be achieved by overlaying each hazard area upon the existing land use map.
- (ii) An inventory and analysis of the existing uses of the land and structures in hazard areas shall be completed. The intent of this inventory is to put into perspective the level of existing development within hazardous areas. It is designed to portray for local governments what portion of their population, housing, commercial establishments, tax base, etc. may be subject to damage as a result of being within a hazardous area. Coastal Storm hazard mitigation policies must be a part of the land use plan and the following must be considered:
  - (I) Policies intended to mitigate the effects of high winds, storm surge, flooding, wave action, erosion, etc.;
  - (II) Policies intended to discourage development, especially high density or large structures in the most hazardous areas;
  - (III) Policies dealing with public acquisition of land in the most hazardous areas;

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- (IV) Policies dealing with evacuation. While it is recognized that evacuation is the responsibility of county emergency management personnel and the N.C. Division of Emergency Management, each land use plan should consider the impact of the land use and other policies on evacuation problems. The following should be considered: decreasing density so as to decrease the number of people needing to evacuate, requiring that major residential development (including motels, condos and subdivisions or over 30 units) provide adequate emergency shelter for their occupants, ensure that new public buildings can be adequately used as shelters, participation in a regional evacuation planning process.
- (iii) A description of the relative severity and type of risk or risks and an indication of the monetary value of the losses that might be sustained in each of the hazard areas.
- (iv) Hazard Mitigation policies which apply to all hazard areas, including both public and private facilities. In developing these policies, local government should consider the following:
- (I) separate policies which deal with the effects of high winds, flooding, wave action and erosion for those hazard areas where such forces may be expected;
  - (II) means of dealing with structures and uses which do not conform to the hazard mitigation policies;
  - (III) means of encouraging hotels, restaurants, and similar large commercial structures to locate outside of erosion prone areas;
  - (IV) policies which deal with the acquisition of parcels located in hazard areas or rendered unbuildable, for the purpose of public access.
- (B) A post disaster reconstruction plan based on the hazard mitigation policies is required as part of the land use plan. This reconstruction plan should distinguish between immediate cleanup and removal policies designed for removal of debris from roads, beaches, and other immediate health and safety hazards and those policies which will direct cleanup and repair over a longer period of time. Each reconstruction plan should include: Post disaster reconstruction policies are re-

quired as part of the land use plan in order to guide development during the reconstruction period following a disaster so that the community, as it is rebuilt, is less vulnerable to coastal storms than it was before the disaster. The following should be considered in these policies:

- (i) Reference to Emergency Management responsibilities for immediate cleanup and removal activities to minimize health and safety hazards; a reference to the county emergency management plan, especially the preparation and response sections;
- (ii) local policies which will direct reconstruction over a longer period of time;
- (iii) The consideration of the establishment of a "recovery task force" to oversee the reconstruction process and any policy issues which might arise after a storm disaster;
- (iv) the establishment of a schedule for staging and permitting repairs, including the imposition of moratoria, according to established priorities assigned to the restoration of essential services, minor repairs, major repairs and new development; and guidelines for post-disaster repair and reconstruction, including but not limited to:
  - (I) the timing and completion of damage assessments;
  - (II) the timing and imposition of temporary development moratoria; and
  - (III) the development standards to which repairs and reconstruction shall conform.
- (v) the establishment of a schedule for staging and permitting repairs and reconstruction according to established priorities assigned to the restoration of essential services, minor repairs, major repairs and new development; policies for repair and/or replacement of public infrastructure, including relocation to less hazardous areas.
- (vi) The determination of which agency such as the local legislative body or a special recovery task force is to implement the policies and procedures contained in the Post-Disaster Reconstruction Plan.
- (vii) The establishment of policies for repair and/or replacement of public utilities and facilities including possible relocation to less hazardous areas.
- (C) The local government shall, in cooperation with the county and the Division of

Emergency Management, determine if the local evacuation plan is adequate and based on a sound analysis of existing situations. If the required evacuation time exceeds the standard warning time as provided by the National Weather Service, the local government should consider adopting policies which would improve the capacity of evacuation routes, or limit the level of development in areas to be evacuated, or otherwise reduce the amount of time needed to safely evacuate. It is recognized that many factors affecting local evacuation are beyond the control of the local unit of government. Nevertheless it is vital that the local plan be cognizant of these factors and that regional efforts be initiated to mitigate them.

- (d) The preparers of storm hazard mitigation, post-disaster reconstruction and evacuation plans shall advise all affected disaster relief and assistance agencies such as the Division of Emergency Management, the federal Emergency Management Agency, and the Department of Transportation in an effort to coordinate these plans.
- (e) In an effort to standardize these plans for use by various agencies, all plans prepared under these rules shall be prepared in the format outlined in Subparagraphs A through C.

- (b) For each of the policy issues listed in Paragraph (a)(1) through (6) of this Rule, the land use plan shall contain the following: a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented. Local policies should pay particular attention to water quality impacts and the longer term accumulative impacts of development.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0204 LAND CLASSIFICATION**

- (a) A land classification system has been developed as a means of assisting in the implementation of the policies adopted as provided in Rule .0203 of this Section. By delineating land classes on a map, local government and its citizens can specify those areas where certain policies (local, state and federal) will apply. The land classification system is intended to be supported and complemented by existing zoning, subdivision and other local management tools (if any) and these local tools should be consistent with the

classification system as much as possible. Although specific areas are outlined on a land classification map, it must be remembered that land classification is merely a tool to help implement policies and not a strict regulatory mechanism. The land classification map must be of a scale and quality that is easily read by local, state and federal agencies. Boundaries of each land class should be described as clearly as possible in the text. To further clarify its intent, the local government should describe how land classification is linked to policy. For example, a local government may have a policy to protect surface water quality from agriculture and urban development runoff. The implementation strategy might be to require land buffers, swales etc. between development and water bodies. The local government could then designate a conservation buffer around water bodies. This buffer could be described in the narrative of the plan as "...a one mile buffer of conservation lands..." which would clarify the local government's intent.

(c) The land classification system includes five seven classes: developed, urban transition, limited transition, community, rural, rural with services, and conservation. Local governments may subdivide these classes into more specific subclasses. Any subclass should be able to aggregate back to the original class. Some classes may not apply to each local government; for example, the community or rural class may not apply in an incorporated municipality. Local governments are also encouraged to make some distinction between urban transition areas, which are intended to reflect intensely developing areas with the full range of urban services to be supplied, and limited transition areas that are less intensely developed, may have private services and are frequently located in a rural landscape. Both of these classes are described later in this Rule.

(d) In applying the land classification system each local government should give particular attention to how, where and when development of certain types and intensity will be encouraged or discouraged. Urban land uses and higher intensity uses which presently require the traditional urban services should be directed to lands classified developed. Areas developing or anticipated to develop at urban densities which will eventually require urban services should be directed to lands classified transition. Low density development in settlements which will not require sewer services should be directed to areas classified as community. Agriculture, forestry, mineral extraction and other similar low intensity uses and very low density, dispersed residential uses should be directed to lands classified rural. Generally, public or private water or sewer systems will not

be provided in areas classified rural as an incentive for intense development.

(1) Developed:

(A) Purpose. The purpose of the developed class is to provide for continued intensive development and redevelopment of existing cities. towns and their urban environs.

(B) Description and characteristics. Areas meeting the intent of the developed classification are currently urban in character where minimal undeveloped land remains and have in place, or are scheduled for the timely provision of, the usual municipal or public services. Urban in character includes mixed land uses such as residential, commercial, industrial, institutional and other uses at high to moderate densities. Services include water, sewer, recreational facilities, streets and roads, police and fire protection. In some instances an area may not have all the traditional urban services in place, but if it otherwise has a developed character and is scheduled for the timely provision of these services, it still meets the intent of the developed classification. Areas developed for predominantly residential purposes meet the intent of this classification if they exhibit: existing high to moderate densities such as

- (i) a density at or approaching 500 dwelling units per square mile; or
- (ii) (i) a density of 3 or more dwelling units per acre; or
- (iii) (ii) a majority of lots of 15,000 square feet or less, which are provided or scheduled to be provided with the traditional urban services; and or
- (iv) (iii) permanent population densities approaching or exceeding 2,000 persons per square mile and the seasonal population may swell significantly; are high and seasonal populations may swell significantly.

(C) Discussion. Local governments may subdivide the developed class into subclasses. Developed multifamily residential, developed single family residential, developed commercial and developed industrial are examples. In applying the developed class or subclasses, the local government should discuss how, when and where it will provide the services necessary to support the needs of an urban area. This class is designed to illustrate urban intensity development and services necessary to support it and should be ap-

plied to existing cities and towns and intense development within the extraterritorial planning jurisdictional area (if any). The developed class is one of two classes the local government should apply to areas containing intense urban development requiring urban services.

(2) Urban Transition:

(A) Purpose. The purpose of the urban transition class is to provide for future intensive urban development on lands that are suitable and that will be provided with the necessary urban services to support intense urban development.

(B) Description and Characteristics. Areas meeting the intent of the urban transition classification are presently being developed for urban purposes or will be developed in the next five to ten years to accommodate anticipated population and urban growth. These areas are in, or will be in a an urban "transition" state of development going from lower intensity uses to higher intensity uses and as such will eventually require urban services. Examples of areas meeting the intent of this class are lands included within municipal extraterritorial planning boundaries and areas being considered for annexation.

(i) Areas classified urban transition will provide lands for intensive urban growth when lands in the developed class are not available. Urban transition lands must be able to support urban development by being generally free of physical limitations and be served or readily served by urban services. Urban development includes mixed land uses such as residential, commercial, institutional, industrial and other uses at or approaching high to moderate densities. Urban services include water, sewer, streets and roads, police and fire protection that will be made available at the time development occurs or soon thereafter. Permanent population densities in this class will be high approaching 2,000 persons per square mile and the seasonal population may swell significantly.

(ii) In choosing land for the urban transition class, such land should not include: Areas with severe physical limitations which would make the provision of urban services difficult or impossible, lands which meet the definition of conservation, lands of special value (unless no other alternative

exists) such as productive and unique agricultural lands, forest lands, potentially valuable mineral deposits, water supply watersheds, scenic and tourist resources including archaeological sites, habitat for important wildlife species, areas subject to frequent flooding, areas important for environmental or scientific values, lands where urban development might destroy or damage natural systems or processes of more than local concern, or lands where intense development might result in undue risk to life and property from natural or existing manmade hazards.

(iii) If any designated area of environmental concern is classified transition a definitive explanation shall be included stating why the area is felt to be appropriate for high density development. It should be understood that even though AEC standards occasionally permit urban transition type development on a lot by lot basis within the various AEC's, this classification should generally not be applied to any AEC.

(iv) Predominantly residential areas meet the intent of the transition classification if they exhibit characteristics such as Areas that are predominantly residential meet the intent of this class if:

(I) a density at or approaching 500 dwelling units per square mile, or they are approaching three dwelling units per acre, or

(II) a density which will meet or exceed three dwelling units per acre, or a majority of the lots are 15,000 square feet or less and will be provided with essential urban services to support this high density development, or

(III) a majority of lots of 15,000 square feet or less which are provided with or will be provided with the necessary urban services to support high intensity development, are contiguous to existing developed municipal areas.

(+) In most cases the transition class will be adjacent or contiguous to the developed class.

(3) Limited Transition:

(A) Purpose. The purpose of the Limited Transition Class is to provide for development in areas that will have some services, but are suitable for lower densities than those associated with the Urban Transition Class, and or are geograph-

ically remote from existing towns and municipalities.

(B) Description and Characteristics. Areas meeting the intent of this class will experience increased development during the planning period. They will be in a state of development necessitating some municipal type services. These areas are of modest densities and often suitable for the provision of closed water systems rather than individual wells.

(i) Areas classified Limited Transition will provide controlled development with services may not be on lands that suitable for traditional high intensity urban development normally associated with sewers or other services. These may be lands with physical limitations or areas near valuable estuarine waters or other fragile natural systems. Sewers and other services may be provided because such services are already in the area or readily available nearby, because the lands are unsuitable for septic tanks or the cumulative impact of septic tanks may negatively impact significant public resources.

(ii) The Limited Transition class is intended for predominately residential development with densities of three units per acre or less, or the majority of lots 15,000 square feet or greater. In many areas, lower densities would be necessary and should be discussed. Clustering or development associated with Planned Unit Developments may be appropriate in the Limited Transition Class.

(iii) Areas which meet the definition of the Conservation class should not be classified Limited Transition.

(C) Discussion. The developed and transition classes and subclasses should be the only areas under active consideration by the local government for intensive urban development requiring urban services. In applying the transition class or subclasses the local government should describe how, when and where it will provide services necessary to support the needs of this intense land class. If the local government intends to allow the private provision of urban services such as sewage package treatment systems, community water systems, private or rural fire protection, private garbage pick up, etc. then the local government should also discuss how it will ensure these private services

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will be provided so as to avoid unnecessary future public expenses. This class is designed to illustrate emerging and developing urban areas and to help local governments ensure adequate urban services will be provided to support such development. As sewer and other services become more widespread, they are frequently extended to areas that are not suitable for high density urban development. The use of such services generally increases environmental protection in these areas if the density of development remains relatively low. The Limited Transition class is intended to provide for appropriate moderate densities of development with the benefits of services. However, the reliability of services such as sewage treatment systems is critical in these areas. If the local government intends to allow the private provision of urban services such as sewage systems and garbage collection, then the local government should require special assurances that these private services will reliably protect the public resources and avoid unnecessary public expenses. Both the Urban Transition and Limited Transition classes are designed to illustrate emerging and developing areas where some appropriate level of services are required.

(3) (4) Community:

(B) Description and Characteristics. Areas meeting the intent of the community class are presently developed at low densities which are suitable for private septic tank use. These areas are clustered residential and/or commercial land uses which provide both low intensity shopping and housing opportunities and provide a local social sense of a "community". Very limited municipal type services such as fire protection and community water may be available, but municipal type sewer systems are not to be provided as a catalyst for future development. In some unusual cases sewer systems may be possible, but only to correct an existing or projected public health hazard. Areas developed in a low density fashion in small, dispersed clusters in a larger rural landscape with very limited or no water and sewer services meet the intent of this class. Areas developed at low density in a cluster meet the intent of the community class if they exhibit characteristics such as

(4) densities of less than 500 dwellings per square mile, or

- (ii) few residential development densities which meet or exceed three dwellings per acre, or
- (iii) residential lot sizes of 15,000 square feet or greater, and/or
- (iv) low population densities such as 640 persons per square mile (one person per acre).

(4) (5) Rural:

(A) Purpose. The purpose of the rural class is to provide for agriculture, forestry, mineral extraction and various other low intensity uses on large sites including low density dispersed residential uses where urban services are not and will not be required. Any development in this class should be compatible with resource production and should not significantly impair or permanently alter natural resources other allied uses traditionally associated with an agrarian region. Other land uses, due to their noxious or hazardous nature and negative impacts on adjacent uses may also be appropriate here if sited in a manner that minimizes their negative effect on surrounding land uses or natural resources. Examples include energy generating plants; refining plants, airports, sewage treatment facilities; fuel storage tanks and other industrial type uses. Very low density dispersed residential uses on large lots with on site water and sewer are consistent with the intent of the rural class. Development in this class should be as compatible with resource production as possible.

(B) Description and Characteristics. Areas meeting the intent of this classification are appropriate for or presently used for agriculture, forestry, mineral extraction and similar allied other uses, that due to their hazardous or noxious nature, should be located in a relatively isolated and undeveloped area. Very low density dispersed, single family residential uses are also appropriate within rural areas where lot sizes are large and where densities do not require the provision of urban type services. Private septic tanks and wells are the primary onsite services available to support residential development, but fire, rescue squad and sheriff protection may also be available. Population densities will be very low, less than one person per acre.

(C) Discussion. The rural class is the broadest of the five classes and will generally constitute the major land class on county land classification maps. Local

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governments may subdivide the rural class into subclasses such as rural/agriculture, rural/forestry etc. in order to illustrate where these basic rural activities will occur.

(6) Rural with Services.

(A) Purpose. The rural services class is to provide for very low density land uses including residential use where limited water services are provided in order to avert an existing or projected health problem. Development within this class should be low intensity in order to maintain a rural character. Rural water systems, such as those funded by Farmers Home Administration, are or may be available in these areas due to the need to avert poor water quality problems. These systems, however, should be designed to serve a limited number of customers and should not serve as a catalyst for future higher intensity development.

(B) Description and Characteristics. Areas meeting the intent of this class are appropriate for very low intensity residential uses, where lot sizes are large, and where the provision of services will not disrupt the primary rural character of the landscape. Private wells and septic tank services may exist, but most development is supported by a closed water system. Other services such as sheriff protection and rural or volunteer fire protection and emergency rescue etc. may also be available.

(C) Discussion. This class is intended to be applied where the local government has provided, or intends to provide very limited water services to avert a known or anticipated health problem in a predominantly larger agrarian region.

(7) Conservation:

(C) Discussion. The conservation class is designed to illustrate the natural, productive, scenic, cultural and recreational features of the coastal zone which make the region a desirable place in which to live, work and visit. As such the conservation class should be applied to areas that because of their unique, productive, limited, cultural or natural features should be either not developed at all (preserved), or if developed, done so in an extremely limited and cautious fashion. At a minimum all AEC's as defined in 15 NCAC 7H are included in this class and the land use plan shall so state, and the local government is strongly urged to include other similar

areas protected by either other state or federal agencies. Examples include Army Corps of Engineers' "404 wetlands". Urban services, public or private, should not be provided in these areas as a catalyst to stimulate intense development. In most cases limited onsite services will adequately support any limited development within this class and will also protect the very features which justify the area's inclusion in the conservation classification. It should be understood that even though AEC standards occasionally permit urban type development on a lot by lot basis within the various AEC's and that services are occasionally provided, this is the exception rather than the rule, and the primary intent of the conservation class is to provide protection for the resources included therein. Mapping of AEC's in the conservation class on the local government's land classification map should be accomplished with the understanding the AEC's are intensively defined by their characteristics in 15 NCAC 7H, and therefore maps only indicate approximate locations and are not definitive enough for site specific regulation purposes. Policy development in the land use plan should acknowledge the intent of this class and policies should be consistent with the function of areas shown in the conservation class.

*Statutory Authority G.S. 113A-107(a);  
113A-124.*

### .0207 PUBLIC PARTICIPATION

(a) Local governments are encouraged required to employ a variety of educational efforts and participation techniques to assure that all segments of the community have a full and adequate opportunity to be informed and to effectively participate in planning decision-making. Educational efforts may include, but are not limited to newspaper articles, television and radio shorts etc., and participation techniques can include, but are not limited to, neighborhood advisory groups, questionnaires, newsletters and public meetings. To encourage public participation at meetings, the public shall be informed of each public meeting in several ways, rather than relying only on the minimum legal notice. Local governments shall discuss in the land use plan the methods of public participation that were used in plan production. The local government shall ensure that its public education and participation process was scheduled in such a manner that the

public had adequate advance notice of such opportunities. The local government should develop a public information education schedule at the beginning of the planning process and notify the public periodically of its input opportunities.

(b) While final decisions on policy must be made by elected officials, the views of a wide cross-section of citizens shall be actively solicited and considered. This public participation effort shall ensure that all economic, social, ethnic and cultural viewpoints are fully considered in plan development, adoption, amendment and implementation. For all land use plans, a concise citizen participation plan shall be prepared and adopted by the local government. At a minimum, the plan shall include the following:

- (1) Designation of the principal local board, agency or department responsible for supervision of the project.
- (2) A public information education schedule with specific dates.
- (3) An explanation of how the public will be notified of its opportunities for input.
- (4) All citizen participation plans for land use plans will include a public hearing or meeting conducted at the beginning of the update process. This shall be in addition to the public hearing to be conducted on the completed land use plan. During the initial public hearing or meeting, the local government will specifically discuss the existing policy statements prepared in accordance with Rule .0203 Policy Statements. The significance importance of the policy statement to the CAMA land use planning process shall be described. The process by which the local government will solicit the views of a wide cross-section of citizens in the development of updated policy statements will be explained at the public hearing.
- (5) Each citizen participation plan shall ensure that all economic, social, ethnic and cultural view points are considered as much as possible in the development of each land use plan.
- (6) The adopted citizen participation plan shall be included as part of the local government's land use plan to include a listing of meetings, questionnaires etc. and an assessment as to the effectiveness and adequacy of the citizen participation effort.
- (c) While final policy decisions will be made by local officials, the citizen participation plan is designed to give the public the opportunity to voice its views on all required policy items.

Statutory Authority G.S. 113A-107(a);  
113A-124.

**SECTION .0400 - LAND USE PLAN AMENDMENT PROCESS**

**.0403 NOTICE TO COASTAL RESOURCES COMMISSION**

(b) The unit of government amending the land use plan shall submit the full text of any proposed amendment in full page units as it would appear in the land use plan if adopted in the proposed form. Any maps (such as the land classification map) that are the subject of the amendment or that will be affected by the amendment shall also be submitted as they would appear if the proposed amendment were adopted. If the proposed land use plan amendment includes reclassifying an area from a lower intensity land class which does not presently require urban type services to a higher intensity class which will necessitate urban type services, then the local government should describe, as part of the amendment, how, when and where these services will be provided in order to support such a reclassification. If the local government intends to allow private services such as sewage package treatment systems, private garbage pickup, community water systems etc., then the local government should also discuss how it will ensure these private services will be provided so as to avoid unnecessary future public expenses. Proposed amendments shall be submitted to the executive secretary with the notice of the public hearing.

- (1) Local governments that presently enforce the minimum land management tools (zoning and subdivision regulations, or planned unit development ordinances; PUD's) and also supply other urban services such as water, sewer, police fire protection, solid waste disposal, transportation network and schools, shall so state, and as part of any plan amendment proposal shall assure the CRC that the local government has or will provide for adequate services to support any development that will occur. As part of this assurance, the local government shall discuss the circumstances making the amendment necessary and shall also describe how this amendment will help the local government achieve and implement its stated policies as contained in the land use plan. This discussion shall also include an examination of the availability of vacant land presently in the land clas-

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sification being sought for in the proposed amendment and why the land proposed for reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.

- (2) Local governments that are not presently enforcing the minimum land management tools (zoning and subdivision regulations or PUD's) and that do not provide public services such as water, sewer, police, fire protection, solid waste disposal, transportation network and schools, shall so state as part of any proposed plan amendment. If the local government intends to allow these services to be provided privately, then a "demand-supply" analysis is required as part of any plan amendment proposed. This analysis shall be thoroughly discussed at the local public hearing prior to local action and shall be available for public review during the 30 day public hearing notice period as part of the notice and the notice shall so state. This analysis shall also include information as to the whole range of uses permitted within the proposed land classification and shall discuss potential impacts associated with those uses, including the most dense possible development therein. At a minimum, the demand-supply analysis shall discuss: water, sewer, police, fire protection, solid waste disposal, transportation impacts and school impacts. Potential impacts on the immediate environment shall also be discussed. As part of any proposed amendment, the local government shall also discuss the circumstances making the amendment necessary and shall also describe how the amendment will help the local government achieve and implement its stated policies as contained in the land use plan. This discussion shall also include an examination of the availability of vacant land presently in the land classification being sought, and why the proposed reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.

*Statutory Authority G.S. 113A-110; 113A-124.*

### **.0405 CONSISTENCY AND ADOPTION**

(b) The Coastal Resources Commission shall review locally adopted land use plan amendments that are not subject to the waiver provisions. ~~at~~

the first regularly scheduled meeting held after the executive secretary has received notification of local adoption, provided adequate time exists to determine the sufficiency of the amendment. The local government shall submit in writing its proposed plan amendment to the executive secretary or his designee at least 21 calendar days prior to the Commission meeting at which the local government intends for the Commission to consider the change. This schedule should provide time for an evaluation of the amendment to determine if it is sufficient. If adequate time is not available for review of the amendment, the local government shall be advised in writing by the executive secretary of the date at which the commission anticipates review of the amendment. Public comments are invited during the CRC review of the proposed plan amendment.

(c) If additional time is needed for review of a plan amendment, the local government shall be advised in writing according to Paragraph (b) of this Rule. Otherwise failure of the CRC to take negative action at its first regularly scheduled meeting after notification to the executive secretary of the adopted amendment indicates compliance with these standards and commission approval of the amendment.

*Statutory Authority G.S. 113A-110; 113A-124.*

## SECTION .0500 - LAND USE PLAN UPDATE PROCESS

### **.0506 OFFICIAL COPY OF PLAN**

An official copy of the adopted land use plan including all amendments and updates, shall be kept on file by the Coastal Resources Commission and the local government adopting the plan. County local governments shall exchange certified plans both with contiguous counties and municipalities within its borders and each municipality within a county shall also exchange its certified plan with the county in which it is located.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the NRCD - Division of Coastal Management intends to amend rule cited as 15 NCAC 7H .0208.*

*The proposed effective date of this action is October 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on July 27, 1989 at Duke Marine Lab Auditorium, Pivers Island, Beaufort, NC.*

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Management Division will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by contacting Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2293.

#### **SUBCHAPTER 7II - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

##### **SECTION .0200 - THE ESTUARINE SYSTEM**

###### **.0208 USE STANDARDS**

- (b) Specific Use Standards.
- (6) Docks and Piers.

(C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:  
(iii) ~~in no case extend not extending~~ more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of the channels, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The one-third length limitation will not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.

*Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15 NCAC 10F .0347.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on June 14, 1989 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.*

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from May 30, 1989 to June 29, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury Street, Raleigh, NC 27611.

#### **CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

##### **SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

###### **SECTION .0300 - LOCAL WATER SAFETY REGULATIONS**

###### **.0347 CRAVEN COUNTY**

(a) Regulated Areas. This Rule applies to the following waters in Craven County:

- (1) that portion of Northwest Creek between the entrance buoys at Fairfield Harbour Marina and the mouth of Spring Creek, and to all of Spring Creek, including the bulkheaded area of Fairfield Harbour, in Craven County;
- (2) That area of water between the entrance buoys of the Olde Towne Lake, from the Trent River and including all of Olde Towne Lake and the bulkhead area of Olde Towne Harbour itself;
- (3) Matthews Point Marina. That triangular portion within 300 feet on either side and 150 feet straight off of the main pier at Matthews Point Marina located on Clubfoot and Mitchell Creeks, at the end of SR 1711 in the Harlowe area of Craven County.

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Craven County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

*Statutory Authority G.S. 75A-3; 75A-15.*

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### **TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

*Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rule cited as 16 NCAC 6C .0101.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on June 22, 1989 at Education Building, 3rd Floor Conference Room, 116 West Edenton Street, Raleigh, NC 27603-1712.*

*Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.*

#### **CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION**

##### **SUBCHAPTER 6C - PERSONNEL**

###### **SECTION .0100 - GENERAL PROVISIONS**

###### **.0101 DEFINITIONS**

As used in this Subchapter:

(5) "Part-time employee" means a person employed for half time or more at least twenty hours per week.

*History Note: Authority N.C. Constitution, Article IX, Sec. 5.*

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*Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0201 - .0202, .0205 and repeal rules cited as 16 NCAC 6C .0203 - .0204.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 9:30 a.m. on June 22, 1989 at Education Building, 3rd Floor Conference Room, 116 West Edenton Street, Raleigh, NC 27603-1712.*

*Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.*

###### **SECTION .0200 - TEACHER EDUCATION**

###### **.0201 STATE EVALUATION COMMITTEE ON TEACHER EDUCATION**

(a) The SBE appoints an evaluation committee of at least 18 persons who are lay and professional representatives of all phases and levels of education. Members serve three year staggered terms, and may serve no more than two consecutive terms. The SBE designates the chairman and secretary of the committee.

(b) The committee performs the following functions:

- (1) meets as necessary with the chairs of visitation committees and IHE representatives to review state and National Council for Accreditation of Teacher Education (NCATE) visitation committee reports; to determine compliance with the 70 percent pass rate on the NTE (professional knowledge and specialty area); and to review performance data of graduates in the initial certification program which requires a 95 percent rate of success; and
- (2) advises IHEs of their compliance status regarding SBE requirements; and
- (3) makes reports and recommendations to the SBE.

*Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.*

###### **.0202 APPLICATION FOR APPROVAL**

(a) Each IHE which seeks SBE approval for any teacher education program must file with the department a preliminary application in the form prescribed by the SBE.

(b) The IHE will engage in self-study in accordance with SBE guidelines, after which the IHE will file a self study report with its application, the existing NCATE/state protocol agreement.

(c) When the IHE has completed all preparation phases of the program, self-study, the department sends a visitation committee to verify the self study report, reports for all specialty areas for which approval is sought.

(d) The evaluation committee considers the NCATE/state visitation committee report, reports, together with any IHE response to the state report as well as student performance data. The evaluation committee makes recommendations to the SBE regarding approval.

(e) The SBE approves programs for a seven-year five-year period unless it considers a provisional approval period of from one to three years appropriate. IHEs on provisional approval must demonstrate annual progress toward meeting all requirements of unconditional approval.

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- (f) The department SBE notifies IHEs which are denied approval of the reasons for denial. The IHE may reapply after it has corrected the conditions which led to the denial of approval.

*Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.*

**.0203 INSTITUTIONAL POLICIES (REPEALED)**  
**.0204 TEACHER EDUCATION POLICIES AND PROCEDURES (REPEALED)**

*Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.*

**.0205 TEACHER EDUCATION PROGRAMS STATE REVIEW STANDARDS**

(a) Curriculum design:

(1) The IHE clearly states curriculum objectives which relate to the student's professional role;

(2) The IHE states in writing the knowledge, skills and competencies to be acquired by the student;

(3) The IHE adapts curriculum components to individual student strengths and needs;

(4) The content of each curriculum component relates to the actual experience of the employee;

(b) Component for initial certification:

(1) General studies. General studies represent knowledge required for effective citizenship, including the arts, humanities, social sciences, natural sciences, mathematics, and healthful living;

(2) Areas of specialization. Areas of specialization include early childhood, intermediate and middle grades education, secondary education content areas, vocational education, K-12 subjects, exceptional children and special service personnel areas;

(2) Professional studies. Professional studies include social and behavioral sciences, human growth and development, teaching and learning theory and laboratory experience appropriate to program objectives;

(A) Professional studies at the initial level of certification result in the acquisition of professional core competencies, which include knowledge and role understanding, planning, instruction, classroom management, and evaluation;

(B) Laboratory experiences involve observation, varied degrees of participation, and extended, continuous, full-time teaching or internship;

(C) Minimum student teaching for certification as a classroom teacher is ten weeks;

(d) Instructional resources. The IHE makes instructional resources accessible to students and faculty. These resources include timely specialized books and periodicals; current curriculum guides, textbooks and courses of study adopted by the SBE; instructional media, equipment and other current technology; testing materials; and supplies;

(d) Program improvement. The IHE periodically evaluates teacher education programs and improves them as needed;

(e) Faculty preparation. Faculty who provide instruction must be competent within their area and level of specialty and meet the following criteria:

(1) hold at least the master's degree with a graduate major and/or demonstrated competencies in the area(s) assigned; or have specialized preparation beyond the master's degree if teaching students working toward advanced level certification; and

(2) at least one half of the full time faculty, including the administrative head of the teacher education program, possess the earned doctorate;

(f) Faculty specialization and utilization. The faculty has appropriate specialized training in the various areas of the teacher education program and meet the following minimum requirements:

(1) has five full time professional education faculty or the equivalent for preparation at both the elementary and secondary levels;

(2) has one full time faculty member with appropriate specialization, such as the doctoral degree, in each field of advanced level specialization;

(3) has two full time specialized faculty or the equivalent for each master's level program or three full time or the equivalent for additional years of preparation in special service areas; and

(4) has expertise in school law, school finance, school plant, school personnel, instruction, curriculum, school counseling and psychology, and related social and behavioral science disciplines, for preparation of personnel in all special service areas;

(g) The faculty demonstrates a continuous relationship with elementary and secondary schools to assure that their teaching and research are current and relevant;

(h) The IHE maintains a well-defined plan for the systematic evaluation of faculty performance;

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- (a) In order to receive approval by the SBE, a teacher education program must:
- (1) obtain successful NCATE review;
  - (2) obtain successful state review of the specialty area(s) and professional studies;
  - (3) demonstrate that its graduates have achieved a minimum 70 percent pass rate on the NTE (professional knowledge and specialty area); and
  - (4) demonstrate that at least 95 percent of its graduates perform successfully in the initial certification program.
- (b) For purposes of state review of specialty areas:
- (1) "professional studies" (professional education) means the portion of the total preparation program that prepares students to work effectively in professional education roles, and it includes pedagogical, theoretical, and practicum studies.
  - (2) "specialty studies" means the sequence of courses and experiences in the academic or professional area in which the student plans to teach, for the grade level at which the student plans to teach, and/or for the services that the candidate plans to provide.
- (c) Elements that are common to all specialty areas and that need be addressed only once in the self-study, deal with professional studies. The professional studies are designed to provide all potential educators with the generally accepted body of knowledge, theory and applications that is the basis for effective educational practice.
- (1) Written evidence verifies that the state-approved professional studies guidelines for all certificated school personnel are adequately addressed.
  - (2) Written evidence verifies that the state-approved professional studies competencies common to all certificated school personnel are adequately addressed.
  - (3) Candidates for admission must meet minimum score requirements adopted by the SBE on Core Batteries I (Communication Skills) and II (General Knowledge) of the NTE before formal admission can occur. Undergraduate degree-seeking students may not complete more than one-half of the professional studies sequence (excluding student-teaching/internship) before being formally admitted into the teacher education program.
  - (4) Sequentially planned field experiences for undergraduate degree-seeking students begin early in the student's program and culminate in a continuous and extended minimum ten-week period of student

teaching in the area in which the student seeks certification. All field experiences are supervised and formal evaluations involving faculty, cooperating teachers and students occur as appropriate.

- (5) Preparation for entry certification at the advanced level includes supervised internship or field experiences appropriate to the role(s) for which students are being prepared. These experiences are the basis for applying theory to practice, developing competencies at a high proficiency level, and evaluating the candidate's performance.
- (d) Elements that are specific to each specialty area and that must be addressed by each program for each level offered are as follows:
  - (1) Specialty area design, guidelines and competencies. There is a well-designed and well-defined program of study that reflects stated goals and objectives and complies with state-approved guidelines and competencies for the specialty area.
    - (A) The goals and objectives of the specialty area are clearly stated in writing, are readily accessible to faculty, students and other consumers and reflect a clear conception of the role(s) in the public schools for which students are being prepared.
    - (B) An appropriate balance among general studies, specialty area studies and professional studies exists at the undergraduate level to assure a well-rounded education for students.
    - (C) The specialty area complies with state-approved guidelines for the certification area in which the student is being prepared.
    - (D) The specialty area complies with state-approved competencies for the certification area in which the student is being prepared.
    - (E) Master's sixth year (e.g., CAS, Ed.S.) and doctoral curricula are clearly delineated and differentiated from one another and from the undergraduate curriculum.
    - (F) Requirements for certification-only students are clearly described and comparable to those for degree-seeking students.
  - (2) Faculty. There is a competent and appropriately specialized faculty assigned to the specialty area.
    - (A) Each faculty member teaching in the specialty area demonstrates competence in the area(s) of assignment.
    - (B) One appropriately specialized faculty member full-time to the institution must be assigned major responsibility for

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teaching in and coordinating each specialty area offered. To ensure diversity, there must be a sufficient number of additional faculty, appropriately specialized, to deliver the level(s) offered; e.g., undergraduate, master's, specialist. Each advanced degree program that leads to the doctorate has at least three full-time faculty who have earned the doctorate in the field of specialization for which the degree is offered.

- (C) Among the credentials of the faculty delivering (e.g., teaching, directing, coordinating) the specialty area, there is evidence of recent, substantive involvement with public school students, staff members and or programs.
- (D) Among the credentials of adjunct part-time faculty delivering the specialty area there is evidence of recent, substantive involvement with the institution via students, other faculty and or program development.
- (3) Resources. Adequate resources are available and used to accomplish the objectives for each specialty area.
- (A) Specialized books and periodicals, current curriculum guides, textbooks and courses of study adopted by local school systems and the SBE, instructional media, equipment and other forms of technology, testing materials and supplies for the production of teacher-made materials and library resources for the specialty area are available and adequate in number to serve the student population.
- (B) Instructional resources for the specialty area are organized for accessibility and there is evidence of use by both students and faculty.
- (C) Appropriate and sufficiently-equipped classroom space is provided to meet the needs of each specialty area.
- (D) Adequate facilities, including sufficient office space, are provided to serve the needs of staff and faculty, to counsel students, and to work effectively with local school personnel.
- (4) Evaluation. The specialty area engages in program review and evaluation to ensure quality. An annual review of the specialty area is conducted and the resulting data are applied, as appropriate, for program improvement.
- (e) The SBE will monitor annually the following legislative policies:
- (1) certification of methods faculty;

- (2) maintenance of a 70 percent pass rate on the professional knowledge (Core Battery III) and the appropriate specialty area test, if available, on the NTE; and
- (3) successful performance by 95 percent of each program's graduates in the initial certification program.

Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0301, .0304 - .0306, .0309, .0311 - .0312.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 10:30 a.m. on June 22, 1989 at Education Building, 3rd Floor Conference Room, 116 West Edenton Street, Raleigh, NC 27603-1712.*

*Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.*

### SECTION .0300 - CERTIFICATION

#### .0301 GENERAL INFORMATION

(e) All certificates issued by the Department are effective July 1 of the year of issue or upon the date the requirements are completed. Certificates are valid for the remainder of the fiscal year in which the person establishes certification qualifications with the Department or up to a for the five year period following July 1 or the date the person completes certification requirements. Five-year dating cycles are initially based on the completion of credit requirements to qualify for certification, the completion of certificate renewal, or the validity period of the certificate held from another state with which reciprocity has been established. New five-year dating cycles are established only when an expired certificate is renewed.

(g) Professional personnel may be assigned only to areas in which the individual holds certification, provisional certification, endorsement or provisional endorsement. Only individuals who hold full or provisional certification may receive assignments of half time or more. Teachers who possess the skills required to help students satisfy the competency tests may teach

remedial classes for this purpose, regardless of the teacher's certification. The LEA may assign any certified teacher who is the best qualified to teach remedial courses, regardless of certification area. This provision does not apply to any vocational certificate which has been restricted by the Department as a part of completing certification requirements.

*Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.*

**.0304 CERTIFICATION PATTERNS**

- (b) Certificates are of the following types:
- (2) Administrator /supervisor. The holder may serve in general and program administrator roles such as superintendent, assistant or associate superintendent, principal, or assistant principal or curriculum-instructional specialist. There are three levels of preparation:
- (A) master's degree;  
(B) sixth-year; and  
(C) doctorate.
- (3) Education specialist. Student services area. The holder may provide specialized assistance to the learner, the teacher, the administrator and the education program in general. This category includes the curriculum instructional specialist, counselor media specialist and school psychologist. There are three levels of preparation as in the case of the administrator /supervisor, except that the school psychologist is restricted to the sixth-year or doctorate levels.
- (c) The department bases certificate classification on the level and degree of career development and competence. There are two classifications of certificates:
- (1) The initial certificate, which is valid for two years, allows the holder to begin practicing the profession on an independent basis. Only those persons who are actually beginning in the profession require initial certification. Persons who seek certification in this state for the first time and who have two years of appropriate experience as determined by the Department are eligible for a continuing certificate. The holder must serve at least one period a day for two years in a teaching assignment appropriate to the holder's area of initial certification. If the holder is not appropriately placed in-field for a two-year period the holder and/or the holder's employer must apply to the Department to extend the initial certificate.

The Department may extend the initial certificate for up to two years, provided that the extension occurs within five years of the date of qualification as determined by the dating and/or renewal requirements contained in Rules .0301(e) and .0307 of this Section. The holder may have the certificate changed to a continuing certificate after the holder has met established performance criteria as a full time practicing professional for two years, as provided in Paragraph (d) of this Rule.

- (d) To convert the initial certificate to a continuing certificate, the holder must serve two years with a LEA or a non-public school that has a comprehensive program plan for initially certified personnel that meets the criteria contained in this Paragraph and that is approved by the SBE; meet the performance criteria for conversion of an initial certificate to a continuing certificate; and be recommended by the locally designated official of the LEA or non-public school by which the holder is employed. For purposes of this Rule, "year" means not less than six successive calendar months of full time employment in one LEA or non-public school with an approved program plan.

- (1) Each LEA shall develop a comprehensive program plan for initially certified personnel and present the plan to the SBE for approval. Non-public schools that have a state-approved plan to administer the certificate renewal program may also submit a plan for approval. Both LEAs and non-public schools must update their plans by October 15 of each year and submit those plans to the SBE. Each plan must:
- (A) describe adequate provisions for efficient management of the program;
- (B) provide for formal orientation for initially certified personnel describing available services, training opportunities and the process for achieving a continuing certificate;
- (C) provide for the assignment of a mentor team or support team, as determined by the LEA or non-public school, for each initially certified person;
- (D) provide for the principal or principal's designee to share responsibility for providing support, where the LEA or non-public school deems a mentor team to be the appropriate support;
- (E) include on the support team a career status teacher, the principal or principal's designee, and a generalist or a specialist in curriculum/instruction. Other personnel

- such as IIIE members or central office supervisor/administrator staff may be used as resources to the team as needed;
- (F) provide for a minimum of three observations per year, using the first five function areas of the North Carolina Teacher Performance Appraisal Instrument Initial Certification for teachers, the first of which must be for at least one period or instructional activity, preceded by a pre-conference and followed by a post-conference. The others may be unannounced but must be for at least one period or instructional activity and be followed by a post-conference. All persons who observe teachers must be trained in the use of the first five function areas of the performance appraisal instrument for teachers. The first observation must occur before October 30, the second must occur between October 30 and January 15, and the third must occur after January 15 and before April 15;
- (G) provide for the preparation of an individualized professional development plan for each initially certified person that identifies goals, strategies and progress toward improving professional skills;
- (H) provide for structure to identify and deliver services and technical assistance needed by initially certified personnel;
- (I) provide for maintenance of a cumulative portfolio that contains the professional development plan and official documentation of performance in the first five function areas of the performance appraisal instrument;
- (J) provide for the timely transfer of the cumulative portfolio to additional employing LEAs within the state upon request of an initially certified employee;
- (K) assure that the program plan was developed together with IIIE(s) having approved teacher education programs and describe their continuous involvement with the program;
- (L) describe a plan for the systematic evaluation of the program to assure program quality, effectiveness, and efficient management;
- (M) designate a person to verify successful completion of the two-year initially certified program and make recommendations; and
- (N) document that the LFA or non-public school has adopted the plan.
- (2) No later than April 15 of the second year of employment of the initially-certified

person, the locally designated official shall determine whether the person will be recommended for conversion to a continuing certificate. The official makes this determination based on the information contained in the holder's cumulative portfolio. The official shall not recommend for conversion any person who has not performed "at standard" or higher on each of the first five function areas of the performance appraisal instrument for teachers on the final observation prior to April 15 of the second year of employment.

- (A) The official makes the recommendation on a form prescribed by the Department. The Department reviews each recommendation to determine whether the person has in fact achieved at least the required at-standard performance level. If the person has achieved the required performance level, the Department shall approve the recommendation of the locally designated official. If the person has not achieved the required performance level, the Department shall not approve the issuance of a continuing certificate.
- (B) Any person not recommended for conversion from an initial certificate to a continuing certificate may have that action reviewed by filing a contested case petition in accordance with Article 3 of Chapter 150B of the General Statutes. As an alternative, the person may contact an approved teacher education program and complete a program of study as prescribed by the IIIE to correct deficiencies. After the person successfully completes the required additional training, the IIIE must recommend the person for a new initial certification. The holder must then satisfy the performance requirements of this Subparagraph.
- (2) (3) The continuing certificate authorizes professional school service on a continuing basis. This classification includes three categories:
- (A) teacher (class "A" undergraduate and class "G" graduate) in the following areas:
- (i) early childhood education, K-4; elementary education, K-6;
- (ii) intermediate education, 4-6;
- (iii) middle grades education, 6-9;
- (iv) secondary specializations, 9-12;
- (v) special areas, K-12; and
- (vi) occupational.
- (B) administrator /supervisor; and

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(C) education specialist, student service personnel.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

### .0305 CERTIFICATES FOR NON-TEACHER EDUCATION GRADUATES

(a) A person who has not graduated from an approved teacher education program who later desires to teach shall have his/her credentials evaluated by an approved HIE or teacher education consortium. The person shall file a copy of the evaluation with the department. The person shall satisfy the assessment of his/her needs and be recommended by the HIE or consortium for certification.

(c) A person who is qualified to hold at least a class "A" teaching certificate may be issued additional areas of certification on a provisional basis as needed by LEAs. The person must satisfy deficiencies for full certification at the rate of six semester hours per year. The person must complete this yearly credit before the beginning of the following school year and the credit must be directly applicable to the provisional area(s). The person must complete all credit requirements by the end of the fifth year of provisional certification.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

### .0306 CERTIFICATE ENDORSEMENT

Within the operation of approved programs, HIEs may recommend persons who qualify for full certification for an endorsement to that certification. The department issues an endorsement based on a minimum of eighteen semester hours in a specific content area where these hours are specifically related to competencies required for full certification in that subject area. Certificates endorsements are restricted to less than half-time teaching assignments.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

### .0309 RECIPROCITY IN CERTIFICATION

Persons who have not completed an approved teacher education program in this state may be eligible for certification by the Department at the class "A" level as follows:

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

### .0311 TEMPORARY PERMIT

(a) A candidate for certification who has not met the standard examinations requirement may receive an interim certificate a temporary permit if:

- (1) the candidate has been selected for employment in the state as the applicant who best meets the position's specifications;
- (2) (1) the candidate did not know that a minimum standard examination score was required for certification; and
- (3) (2) the candidate has not had the opportunity to satisfy this requirement after becoming aware of it.

(b) The candidate's employer must file an application for an interim certificate with the department on forms furnished by the department. An interim certificate A temporary permit is valid for a four month period only the remainder of the fiscal year during which certification is established. No graduate Graduates of an in-state approved program in this state is programs are not eligible for an interim certificate, a temporary permit.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

### .0312 CERTIFICATE SUSPENSION AND REVOCATION

(f) The SBE will consider requests for reinstatement of revoked certificates. The SBE will not grant any request for reinstatement unless it finds as facts that:

- (1) the action that resulted in revocation did not involve abuse of minors; possession, sale or use of controlled substances; moral turpitude or grounds listed in G.S. 115C-325(e)(f)b. or e.;
- (2) the person has no record of subsequent behavior that could have resulted in certificate revocation;
- (3) there is no court order or judicial determination that would prohibit the person from returning to a certificated position; and
- (4) there has been a sufficient lapse of time since revocation for the person to appreciate the value of certification.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

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*Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to repeal rules cited as 16 NCAC 6D .0201*

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*.0203 and adopt rules cited as 16 NCAC 6D .0204 - .0210.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 1:00 p.m. on June 22, 1989 at Education Building, 3rd Floor Conference Room, 116 West Edenton Street, Raleigh, NC 27603-1712.*

*Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.*

### **SUBCHAPTER 6D - INSTRUCTION**

#### **SECTION .0200 - TEXTBOOKS**

- .0201 STATE TEXTBOOK COMMISSION (REPEALED)**
- .0202 TEXTBOOK BIDS AND CONTRACTS (REPEALED)**
- .0203 DISPOSITION OF OLD TEXTBOOKS (REPEALED)**

*Statutory Authority G.S. 115C-89.*

#### **.0204 TEXTBOOK ADOPTION SCHEDULE**

To ensure adequate time for the evaluation of textbooks presented to the SBE for adoption for use in the public schools, the Textbook Commission, the Department and the SBE shall adhere, to the extent practicable, to the following schedule on and after January 1, 1990:

- (1) January. The Superintendent of Public Instruction will identify for the SBE all textbook contracts scheduled to expire during the next calendar year, and recommend whether such contracts should be renewed or new textbooks adopted the following year.
- (2) March. The Superintendent will present for the SBE's approval a review of the curriculum requirements as prescribed in the Standard Course of Study and Competency Based Curriculum for the areas for which textbooks are scheduled to be adopted that year.
- (3) April. The Superintendent will present for the SBE's approval the call letter and evaluation forms prepared by the Curriculum Review Committee for the textbooks scheduled for adoption that year. The Superintendent will forward approved call letters to publishers listed on the Textbook Company Register and will forward approved evaluation forms to the Textbook Commission.

- (4) June. Textbook publishers will forward textbooks presented by publishers for adoption to the Textbook Commission and other recipients designated in the call letters.
- (5) June 15 to August 1. The Regional Textbook Evaluation Advisory Committees will evaluate textbooks under the direction of the Textbook Commission.
- (6) August and September. The Textbook Commission will review the recommendations of the Regional Textbook Evaluation Advisory Committees, and will prepare its recommendations to the SBE.
- (7) October. The Textbook Commission will present its recommendations to the SBE. The SBE will adopt textbooks.
- (8) November and December. Local school systems review adopted textbooks and identify textbooks to be ordered. Local school systems will place orders before March 1 of the next year.

*Statutory Authority G.S. 115C-89.*

#### **.0205 CURRICULUM REVIEW COMMITTEE**

(a) The Superintendent of Public Instruction shall appoint a Curriculum Review Committee to advise him about criteria to be included in each call letter to publishers requesting submission of textbooks for evaluation and adoption, and the development of forms for evaluation of textbooks presented for adoption.

(b) The Committee shall be organized and selected by the Superintendent of Public Instruction. The Committee should include, in addition to members of the Department of Public Instruction, representatives from local school systems, the Textbook Commission and the community.

(c) The Committee shall begin performing its duties at least one year before the issuance of letters to publishers calling for submission of textbooks for evaluation and adoption.

(d) The Committee's responsibility is to help ensure that textbooks presented for adoption are evaluated for their conformity to the Standard Course of Study and the Competency Based Curriculum, and that the textbooks adopted in fact conform to the Standard Course of Study and the Competency Based Curriculum. The Committee shall develop criteria to be included in each call letter and textbook evaluation forms that reflect the requirements of the Standard Course of Study and the Competency Based Curriculum.

(e) The Committee shall present the criteria and forms it develops to the Superintendent of Public Instruction for review and approval, and

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shall then present the criteria and forms to the SBE for review and adoption.

*Statutory Authority G.S. 115C-89.*

### **.0206 REGIONAL TEXTBOOK EVALUATION ADVISORY COMMITTEES**

(a) The Textbook Commission shall appoint Regional Textbook Evaluation Advisory Committees for each of the state's educational districts defined in G.S. 115C-65. Members shall serve a one-year term that begins on January 1 and ends on December 31 of each year. The Textbook Commission shall fill any vacancy for the remainder of the unexpired term. Members shall serve at the pleasure of the Textbook Commission.

(b) All persons appointed to these committees by the Textbook Commission shall be qualified by training and experience to evaluate textbooks for use in the public schools. In appointing these committees, the Textbook Commission shall consider the textbooks scheduled for adoption during that year, and shall ensure appointment of specialists in the content and grade levels of the areas for which textbooks are to be adopted.

(c) The Committees, using the evaluation forms developed by the Curriculum Review Committee and their training and experience, assists the Textbook Commission in the evaluation of textbooks presented for adoption. Before beginning to evaluate textbooks, each member of the regional committee shall participate in a comprehensive orientation and training session approved by the Superintendent of Public Instruction and the chairman of the Textbook Commission and presented under the direction of the Superintendent.

(d) Each regional committee, under the direction of a member of the Textbook Commission assigned by the Chairman of the Textbook Commission, shall meet and evaluate the textbooks presented for adoption. Following these regional meetings, the Chairman of the Textbook Commission will assign members of the regional committees to subject area committees. These committees, using the criteria and forms developed by the Curriculum Review Committee and approved by the SBE, shall meet, discuss and formalize their recommendations to the Textbook Commission.

(e) The Superintendent will assign to members of the Department the responsibility of assisting the regional committees in the performance of their duties.

(f) Members of the regional committees shall perform all of their prescribed duties between June 15 and August 1 of each year at times and

places designated by the Chairman of the Textbook Commission. Members of the committees who are not under contract with a local school administrative unit for the period between June 15 and August 1 shall receive a salary of one hundred dollars (\$100.00) per day for not more than ten days, plus reimbursement for travel and subsistence expenses as allowed for state employees. Committee members who are under contract with a local school administrative unit between June 15 and August 1, are employed by the Department of Public Instruction, or are employed by another state agency, will receive their regular salaries and will be reimbursed for travel and subsistence expenses only.

*Statutory Authority G.S. 115C-89.*

### **.0207 TEXTBOOK COMMISSION**

(a) Members of the Textbook Commission are appointed according to the provisions of G.S. 115C-87. In recommending persons for appointment to the Commission, the Superintendent of Public Instruction is requested to recommend and the Governor is requested to approve the appointment of at least one member from each of the eight educational districts of the state.

(b) The duties of the Textbook Commission are contained in G.S. 115C-88 and 115C-89. Commission members shall make recommendations for each textbook presented for adoption based on the requirements of the call letter for the textbook as approved by the SBE. The SBE shall prescribe the format for the Commission's recommendations to the SBE for adoption of textbooks. The Superintendent of Public Instruction will assign to members of the Department responsibility for assisting the Textbook Commission in the performance of its duties.

(c) Before beginning to evaluate textbooks, commission members shall participate in an orientation and training session planned by the Chairman of the SBE and the Superintendent and presented under the direction of the Superintendent. The Superintendent shall hold the orientation session as soon as possible after the appointment of new members to the Commission or after changes in the statutes and regulations relating to textbook adoptions.

(d) As prescribed in Rule .0206 of this Section, the Textbook Commission appoints the members of the Regional Textbook Evaluation Advisory Committees and directs them in the performance of their duties.

(e) The Commission may meet with representatives of publishers to discuss the Commission's plans and procedures for adoption of textbooks.

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At no time may the Commission or any of its members meet privately with any publisher's representative.

*Statutory Authority G.S. 115C-89.*

### **.0208 TEXTBOOK COMPANY REGISTER**

(a) In accordance with G.S. 115C-94, the Superintendent of Public Instruction shall maintain a register of all publishers who submit books for adoption by the SBE. The Superintendent shall prescribe the information required for registration.

(b) Only registered companies will receive notice of proposed textbook adoptions by the SBE.

(c) The Superintendent shall remove from the Textbook Company Register any publisher whose representatives attempt to exercise undue pressure of any kind to adopt its books upon a member of the Textbook Commission, the Regional Textbook Evaluation Advisory Committees, the Curriculum Review Committee, or the Department.

(d) The SBE shall direct the Superintendent of Public Instruction to remove from the Textbook Company Register any publisher whose representatives attempt to exercise undue pressure of any form upon a member of the SBE to adopt its books.

*Statutory Authority G.S. 115C-89.*

### **.0209 REQUESTS FOR TEXTBOOKS AND CONTRACTS**

(a) Upon approval by the SBE, the Department will send a request for textbooks, together with a proposed contract, to all publishers listed in the Textbook Company Register, requesting the submission of textbooks that conform to the requirements specified in the request and the proposed contract.

(b) The SBE will adopt textbooks and award contracts based on the following criteria:

- (1) recommendations of the Textbook Commission;
- (2) conformity with the request for the textbooks and the proposed contract;
- (3) conformity with the Standard Course of Study and Competency Based Curriculum;
- (4) price; and
- (5) the needs of the public schools.

(c) The SBE reserves the right to reject any and all textbooks for any reason it deems sufficient.

(d) Each publisher that is awarded a contract must file a performance bond. The Superintendent of Public Instruction shall determine the

amount of the bond based on the costs of the textbooks, the publisher's past performances, and such other factors as the Superintendent determines to be relevant.

*Statutory Authority G.S. 115C-89.*

### **.0210 DISPOSITION OF OLD TEXTBOOKS**

LEAs will dispose of old textbooks as follows:

- (1) LEAs may not give textbooks replaced by a new adoption to any person, firm, or corporation.
- (2) The LEA may use these textbooks as supplementary material.
- (3) The LEA may sell these textbooks only for scrap paper and it must remit the proceeds of the Department.

*Statutory Authority G.S. 115C-89.*

## **TITLE 21 - OCCUPATIONAL LICENSING BOARD**

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Physical Therapy Examiners intends to amend rule(s) cited as 21 NCAC 48A .0005; 21 NCAC 48B .0002 - .0003; 21 NCAC 48C .0101; 21 NCAC 48D .0008; 21 NCAC 48E .0104, .0110; 21 NCAC 48F .0002; 21 NCAC 48G .0203.*

*The proposed effective date of this action is October 1, 1989.*

*The public hearing will be conducted at 11:00 a.m. on June 29, 1989 at 900 Ridgefield Drive, Suite 250, Raleigh, NC 27609.*

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from May 29, 1989, to 5:00 p.m. on June 28, 1989. Such written comments must be delivered or mailed to Constance Peake, N.C. Board of Physical Therapy Examiners, 2426 Tryon Road, Durham, NC 27705.

## **CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS**

### **SUBCHAPTER 48A - ORGANIZATION**

#### **.0005 DEFINITIONS**

The following definitions and the definitions in G.S. 90-270.24 will apply throughout Chapter 48:

- (1) "Education programs" means accredited physical therapy programs and accredited physical therapist assistant programs.
- (2) Reserved.
- (3) "Graduated" or "graduation" means the completion of all requirements, including clinical experience, from an accredited program for physical therapists or physical therapist assistants. If an educational program certifies that the degree is assured and will be conferred at a later date, an applicant will be considered to have been graduated.
- (4) Reserved.
- (5) "~~PES~~" means the Professional Examination Service. Reserved.
- (6) Reserved.
- (7) "PT exam" means the a board approved licensing examination for physical therapists.
- (8) Reserved.
- (9) "PTA exam" means the a board approved licensing examination for physical therapist assistants.
- (10) Reserved.
- (11) "PT graduate" or "PTA graduate" refers to a person who has applied to the Board for licensure within six months of graduation and has received authorization from the Board to perform as a physical therapist or a physical therapist assistant under the required supervision.
- (12) Reserved.
- (13) "Recent graduate" means a person who has been graduated from an educational program for six months or less.
- (14) Reserved.

*Statutory Authority G.S. 90-270.24; 90-270.26; 90-270.31.*

#### **SUBCHAPTER 48B - TYPES OF LICENSES**

##### **.0002 LICENSES BY ENDORSEMENT**

(b) Examination Required. Only those persons initially licensed in another state by virtue of examination will be considered for endorsement. Only the following examinations will be considered:

(1) For Physical Therapists:

(A) Therapists licensed on the basis of the ~~PES~~ a PT exam must present scores on it that meet the North Carolina passing level. If adequate scores and information are not available from the other state, the Board may ask the applicant to have his scores issued through the ~~Interstate Reporting Service of the PES~~, 475 Riverside Drive, New York, New York 10115, appropriate testing service. If scores on one

or two parts of the examination are unsatisfactory, the part or parts must be repeated. If the total score or three parts are failed, the entire examination must be repeated. The cost of repeating the examination will be paid by the applicant.

- (B) If licensed in another state by an examination compiled by that Board, the applicant must supply information for the Board to attempt to obtain the examination in order to determine if it was substantially equal to the examination required by North Carolina at that time. If it cannot be determined that the examination was equal to the North Carolina examination or if the scores received on an acceptable examination did not meet the North Carolina passing requirement, the applicant must take the PT exam. The cost of the examination will be paid by the applicant.
  - (C) A physical therapist currently licensed in another state whose license in that state was granted on the basis of the American Registry of Physical Therapists Examination will be considered for endorsement.
  - (D) If a foreign-trained physical therapist was licensed in another state on the basis of the American Physical Therapy Association's examination for foreign-trained physical therapists, this examination will be considered for endorsement.
- (2) For Physical Therapist Assistants. Only those physical therapist assistants licensed in another state by the ~~PES~~ a PTA exam will be considered for endorsement. The examination score must meet the North Carolina passing level. If not, the applicant will be required to repeat the examination and will pay the cost of the examination.

*Statutory Authority G.S. 90-270.26; 90-270.31(b); 90-270.33.*

##### **.0003 LICENSES BY EXAMINATION**

(c) Examination Taken in Another State. Applicants not previously licensed who take the ~~PES~~ a PT exam or the ~~PES~~ a PTA exam in another state may be considered for licensure in North Carolina by providing scores that meet the North Carolina passing level. All other requirements for North Carolina licensure in effect at the time of application must be met.

*Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30.*

**SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE**

**SECTION .0100 - EXAMINING COMMITTEE OF PHYSICAL THERAPISTS**

**.0101 PERMITTED PRACTICE**

(d) The practice of physical therapy is the application of a broad range of evaluation and treatment procedures related to abnormality of human sensorimotor performance. It includes, but is not limited to, tests of joint motion, muscle length and strength, posture and gait, limb length and circumference, activities of daily living, pulmonary function, cardio-vascular function, nerve and muscle electrical properties, orthotic and prosthetic fit and function, sensation and sensory perception, reflexes and muscle tone, and sensorimotor and other skilled performances; treatment procedures such as hydrotherapy, shortwave or microwave diathermy, ultrasound, infra-red and ultraviolet radiation, ~~cold~~, cryotherapy, electrical stimulation including transtaneous electrical neuromuscular stimulation, massage, debridement, intermittent vascular compression, iontophoresis, machine and manual traction of the cervical and lumbar spine, joint mobilization, machine and manual therapeutic exercise including isokinetics and biofeedback, and training in the use of orthotic, prosthetic and other assistive devices including crutches, canes and wheelchairs.

*Statutory Authority G.S. 90-270.24; 90-270.26.*

**SUBCHAPTER 48D - EXAMINATIONS**

**.0008 LICENSED PERSONS TAKING THE EXAMINATION**

If a physical therapist who is already licensed in the state by means other than ~~the PES~~ a PT exam desires to take ~~this examination~~, a PT exam, he may do so at the current cost of the examination providing he sends a written request to the executive secretary stating his reason for wanting to take the examination.

*Statutory Authority G.S. 90-270.26.*

**SUBCHAPTER 48E - APPLICATION FOR LICENSURE**

**SECTION .0100 - REQUIREMENTS**

**.0104 EXAMINATION SCORES**

Persons seeking licensure by endorsement must have their examination scores sent to the executive secretary by a state of endorsement, by the state in which the examination was taken, or by report from the Interstate Reporting Service.

appropriate testing service. The scores ~~may~~ must be on a licensing board form bearing the official signature and seal of ~~that~~ the reporting Board.

*Statutory Authority G.S. 90-270.26; 90-270.31(b).*

**.0110 FOREIGN-TRAINED PHYSICAL THERAPISTS**

(b) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant must submit the following:

- (1) If the applicant has been graduated from a physical therapy educational program, a certification of physical therapy education is to be submitted directly to the Board.
- (2) If the applicant does not meet the requirements of (b)(1) of this Rule, the Board will examine the applicant's educational background to determine if the general college and professional instruction is substantially equivalent to that of a United States physical therapy education program. At a minimum, ~~at least~~ 120 semester hours of college education is required, which includes a minimum of 57 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education. It is the responsibility of the applicant to make arrangements with a credentialing service acceptable to the Board to have the credentials evaluated. The Board will make its own review of applicant's educational program and is not bound by the findings of the credentialing service.
- (3) Proof acceptable to the Board that a minimum score of 230 has been obtained on the TSE (Test of Spoken English) examination or that English is the applicant's native language.

*Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.*

**SUBCHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES**

**.0002 FEES**

(a) The following fees are charged by the Board:

- (4) penalty for late renewal, ~~ten dollars (\$10.00)~~ twenty dollars (\$20.00) plus renewal fee;
- (5) revival of license lapsed less than five years, ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) plus renewal fee;

## **PROPOSED RULES**

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*Statutory Authority G.S. 25-3.512; 90-270.33.*

### **SUBCHAPTER 48G - RETENTION OF LICENSE**

#### **SECTION .0200 - LAPSED LICENSES**

##### **.0203 REVIVAL OF LAPSED LICENSE**

The following methods may be used to revive a license:

- (1) A license that has lapsed less than five years may be revived by payment of the revival of lapsed license fee and the current year's renewal fee and by completion of the revival form.
- (2) A license that has lapsed more than five years may be revived by payment of the application fee, completion of the application forms, and:
  - (a) passing the "PT exam" (if trained as a physical therapist) or the "PTA exam" (if trained as a physical therapist assistant);
  - (b) satisfactorily completing at least 500 hours of clinical work within a period of time not to exceed six months while working as an aide under the supervision of a licensed physical therapist, providing the Board authorizes the training and the supervising physical therapist accounts for the 500 hours; or
  - (c) endorsement of a current license in another state as provided by Subchapter 48B Rule .0002 of this Chapter.

*Statutory Authority G.S. 90-270.26; 90-270.32; 90-270.33.*

### **TITLE 25 - OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-12 that the State Personnel Office/State Personnel Commission intends to adopt rule(s) cited as 25 NCAC 1A .0005; 1B .0435; 1C .0215; 1D .0910; and 1K .0311-.0324; amend rule(s) cited as 25 NCAC 1D .0302, .0402, .0904, .0905; 1E .0705, .0707, .0709; and 1N .0004; repeal rule(s) cited as 25 NCAC 1K .0301-.0310.*

*The proposed effective date of this action is September 1, 1989.*

*The public hearing will be conducted at 9:00 a.m. on June 15, 1989 at Personnel Development Center, 101 W. Peace Street, Raleigh, N.C. 27611.*

*Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, OSP, 116 W. Jones Street, Raleigh, North Carolina 27611.*

### **CHAPTER I - OFFICE OF STATE PERSONNEL**

#### **SUBCHAPTER 1A - GENERAL PROVISIONS**

##### **.0005 EQUALIZATION OF BENEFITS**

The State Personnel Director shall investigate any situation in which any individual state employee or any group of state employees in one or more job classifications, employed by any state agency or university, receives through legislative action more beneficial compensation, benefits or working conditions than other similarly situated state employees. The Personnel Director, upon a finding that such preferential treatment has created inequities among similarly situated state employees, may authorize the employing units, subject to the availability of funds, to provide the higher level of compensation, benefits or working conditions to those employees similarly situated but not covered by the legislative action.

*Statutory Authority G.S. 126-4.*

#### **SUBCHAPTER 1B - STATE PERSONNEL COMMISSION**

##### **SECTION .0400 - APPEAL TO COMMISSION**

##### **.0435 RECOVERY OF SUBJECT POSITIONS IMPROPERLY REMOVED FROM SYSTEM**

(a) All state positions and the employees who occupy those positions are subject to G.S. Chapter 126 (State Personnel Act, the Act), unless specifically exempted from all or some parts of the Act by the Act itself or by subsequent legislation. Only the General Assembly has the authority to designate, through legislation, whole or partial exemptions from the Act. Any expansion of these exemptions or the creation of new exemptions by any department, agency, institution, university, board or commission without specific statutory authority is invalid and shall be corrected, under the provisions of this Rule, upon discovery. (As used throughout this Rule, the term "exempt" or "exemption" shall refer to exemption from coverage of G.S. 126 and the rules, policies and programs promulgated under it by the State Personnel Commission. The term "subject" shall mean subject to coverage of G.S. 126 and the rules, policies and pro-

## **PROPOSED RULES**

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grams promulgated under it by the State Personnel Commission.)

(b) Subject positions which have been removed from coverage of the Act without specific statutory authority and improperly treated as exempt from the Act must be considered to have always been subject to the Act. When such positions are identified, they shall be classified and brought into the state personnel system under the Act retroactive to the date that such positions were improperly removed from coverage of the Act.

(c) In the event that employees occupying such positions have been denied the correct pay, benefits and rights to which they were entitled as subject employees under the Act, it shall be the responsibility of the employing department, agency, institution, university, board or commission to make the employee whole for any losses the employee suffered as a result of the improper exemption of the employee's position.

(d) Since the primary concern in this area is with the current employee, the implementation of this remedy shall be made for the current employee of the improperly exempted position. The remedy for this problem is not to be considered a change from exempt to subject status since the position was never legally exempted. In regard to personnel records, this will involve the execution of the appropriate forms to remove the improper exemption and establish the correct subject classification and pay.

(e) The employing department, agency, university, board or commission shall reconstruct the employment history of any employee so affected by an improper exemption as though the position and the employee had been originally established as subject. This reconstruction shall be retroactive to the date of the improper exempt designation and shall carry forward to the present, applying all appropriate legislative increases, merit increases and longevity pay for subject employees.

- (1) If the employee would have had greater salary earnings in a subject capacity, then the employee shall be entitled to such back pay as is provided by this Section.
- (2) If the employee would have received longevity pay in a subject capacity, then the employee shall be entitled to payment for longevity, retroactive to the time he would first have been eligible for such payments, in accordance with 25 NCAC, Subchapter 1D, Section .1200.
- (3) If the employee would have had a higher current salary, except for the improper exemption, then the appropriate personnel action and forms shall be filed establishing the higher salary.

(4) There shall be an appropriate adjustment in the employee's vacation and sick leave balance if necessary to bring it in compliance with Subchapter 1E, Sections .0200 and .0300 of this Chapter.

(5) Where such improper exemption shall have resulted in overpayment to the employee, repayment by the employee shall not be required. However, the employing department, agency, university, board or commission shall be responsible for making salary reductions where needed to place such employees within the appropriate salary range for the class to which the position is now assigned.

*Statutory Authority G.S. 126-4 (1), (2), (3), (5), (6), (10); 126-5.*

### **SUBCHAPTER 1C - PERSONNEL ADMINISTRATION**

#### **SECTION .0200 - GENERAL EMPLOYMENT POLICIES**

##### **.0215 EMPLOYMENT CONTRACTS**

(a) No person shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any state agency or university for employment with that agency or university.

(b) No state agency or university may require, as a condition of employment, that a person agree, in writing or otherwise, to a minimum specified length of employment.

(c) No state agency may prohibit, as a condition of initial or continued employment, any person from transferring to another state agency or university.

(d) No state agency or university may require, as a condition of employment, that a person agree, in writing or otherwise, that a payment be made to the employing agency if a minimum specified period of employment is not met.

(e) No agency may require the repayment of the cost of job training required by the employing agency as a condition of continued employment.

(f) Any such contract existing on the effective date of this Rule, or entered into on or after the effective date of this Rule shall be null and void, and without legal effect.

*Statutory Authority G.S. 126-4.*

### **SUBCHAPTER 1D - COMPENSATION**

#### **SECTION .0300 - PROMOTION**

## ***PROPOSED RULES***

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### **.0302 SALARY RATE**

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. The primary factor determining the amount of increase is the relative difference in difficulty and responsibility between the present and new positions. Since promotional increases result in permanent change to basic salary, a promotional increase of more than two steps cannot be justified as an offset to temporary costs of promotion, such as relocation expenses.

#### (1) Permanent Promotion:

(a) The salary shall be increased to step one or by one step whichever is larger. The maximum of the higher class shall not be exceeded. Exceptions: When an employee is demoted with no change in salary and subsequently promoted back to the same level within one year, the salary shall remain unchanged and treated as if the demotion had not occurred; if the employee's salary is above the maximum as a result of a reallocation down, no increase may be given but the salary may remain above the maximum.

(i) If a probationary employee is promoted and the salary is at the hiring rate, the salary must be increased to the hiring rate of the grade to which promoted until the employee is eligible for permanent appointment.

(ii) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.

(b) The salary may be increased by one and one-half steps or two steps.

(c) If the agency finds it necessary and equitable to consider a larger increase for a promotion involving a three or more grade level change, a salary increase of more than two steps may be requested. Some factors to be considered are: nature and magnitude of the change in jobs; available applicants; special or technical expertise required; and previous training and experience. Such requests may be made provided:

(i) The agency head accepts accountability for the decision of the amount to grant and will provide written documentation giving reasons and justification for the requests.

(ii) Salary inequities are not created within the work unit or program.

(d) When a promotion also results in a transfer for the convenience of the state, see 25 NCAC ID .0910, Special Provisions for Employees Transferred for the Convenience of the state.

*Statutory Authority G.S. 126-4.*

### **SECTION .0400 - DEMOTION**

#### **.0402 SALARY RATE**

(c) When a reassignment also results in a transfer for the convenience of the state, see 25 NCAC ID .0910, Special Provisions for Employees Transferred for the Convenience of the state.

*Statutory Authority G.S. 126-4.*

### **SECTION .0900 - TRANSFER**

#### **.0904 SALARY RATE: PERFORMANCE INCREASE ANNIVERSARY DATE**

(a) If an employee transfers to a position having the same salary grade, the salary shall remain unchanged. (Exception: The salary may be reduced if there is a lack of sufficient funds or if it results in the creation of a serious internal salary inequity.) if the salary is at step one or two, the increase anniversary date shall remain unchanged. Employees at step three and above do not have anniversary dates.

(c) If the transfer is to a lower class and results in a demotion or reassignment, the policies on demotion/reassignment apply.

(d) For provisions relating to transfer of employees for the convenience of the state, see 25 NCAC ID .0910, "Special Provisions for Employees Transferred for Convenience of the state."

*Statutory Authority G.S. 126-4.*

#### **.0905 BENEFITS AND RECORDS TRANSFERRED**

(a) When an employee transfers to another agency, all unused sick and vacation leave are transferred as well as time earned toward the next performance increase. shall be transferred. If the employee transfers to an exempt position in which leave will not be earned credited the same as employees subject to the Personnel Act, accumulated vacation leave shall be paid for in a lump sum. Accumulated sick leave will be transferred.

(b) The personnel file, as defined by G.S. 126-22, shall be transferred to the receiving agency.

*Statutory Authority G.S. 126-4; 126-22.*

**.0910 SPECIAL PROVISIONS FOR EMPLOYEES TRANSFERRED FOR CONVENIENCE OF STATE**

(a) The state recognizes that relocation of an employee is often necessary to serve the best interests of state government. In order to most effectively utilize the capabilities of each employee and to staff all positions with qualified persons, the transfer of employees may be necessary.

(b) When transfer is made for the convenience of the state to a new duty station 35 miles or more away from the employee's existing residence, the employee becomes eligible for consideration for reimbursement of moving expenses if the employee chooses to change place of residence. (See also 25 NCAC 1E .1004, LEAVE: EMPLOYEE TRANSFER) Under such circumstances it is the policy of the state to allow a salary increase and to grant leave with pay to the employee for a reasonable amount of time required to locate a new residence, and to accomplish the relocation to that new residence.

(c) **Salary Increase:**

(1) When the transfer is to a position having the same salary grade, the agency head may request a salary increase of one or two steps, but not to exceed the maximum of the range.

(2) When the transfer is to a position having a higher salary grade, the agency head may request a salary increase of one or two steps above the amount justified by the promotional policy, but not to exceed the maximum of the range.

(3) When the transfer is to a position having a lower salary grade, the salary may remain unchanged or the agency head may request a salary increase of one or two steps, provided that in either case, the salary is no more than two steps above the maximum of the lower range.

(d) **Leave with Pay for Time to Locate New Residence.** It is desirable that an employee make a decision on permanent living arrangements prior to the time of transfer to the new duty station. Leave with pay may be granted up to a maximum of three trips of three days each to locate a new residence. The agency shall consider the employee's effort being exerted, and progress made, in order to determine if three trips are necessary.

(e) **Leave With Pay When Moving to New Residence.** Leave with pay shall be granted for two days when the employee moves household and personal goods from the old residence to the

new one. The agency may grant additional days of leave with pay if the distance between old and new duty stations warrants this, or if other uncontrollable factors require a longer period of time.

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER 1E - EMPLOYEE BENEFITS**

**SECTION .0700 - WORKER'S COMPENSATION LEAVE**

**.0705 ADMINISTRATION**

(b) The Office of State Personnel through its Employee Safety and Health Division is responsible for providing assistance to agency personnel in managing their workers' compensation programs and insuring that all agencies provide consistent application of coverage and compensation to injured employees. This office also provides the agencies with the State Government Workers' Compensation Program Manual which is an operational manual used as a guide in processing workers' compensation claims.

*Statutory Authority G.S. 126-4.*

**.0707 USE OF LEAVE**

(a) The Workers' Compensation law provides medical benefits and disability compensation including a weekly compensation benefit up to 66 2/3 percent of the employee's average weekly earnings up to a maximum established by the Industrial Commission each year. When an employee is injured, he ~~she~~ must go on workers' compensation leave and receive workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

(f) Employee Refusal of Coverage: Under certain circumstances an employee may elect to refuse workers' compensation benefits. If an employee refuses workers' compensation benefits for injuries resulting from an on the job injury a release statement, provided by the agency, must be signed by the employee. Unless there is a signed release statement an employee who loses time from work as a result of an on the job injury must be placed under the workers' compensation leave policy.

*Statutory Authority G.S. 97-28; 126-4.*

**.0709 RETURN TO WORK**

(c) Vocational Rehabilitation Assistance. In some cases the extent of disability may be such that vocational rehabilitation will be necessary. If so, the agency will be re-

sponsible for making the necessary arrangements with the North Carolina Division of Vocational Rehabilitation for such training which may be necessary to assist the employee to obtain suitable employment consistent with his performance capabilities.

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER 1K - PERSONNEL TRAINING**

**SECTION .0300 - EDUCATIONAL ASSISTANCE PROGRAM**

- .0301 PURPOSE (REPEALED)**
- .0302 ELIGIBILITY (REPEALED)**
- .0303 APPROVED COURSES (REPEALED)**
- .0304 APPROVED HOURS (REPEALED)**
- .0305 TRAVEL (REPEALED)**
- .0306 TUITION ASSISTANCE (REPEALED)**
- .0307 APPLICATION PROCEDURES (REPEALED)**
- .0308 TAX STATUS (REPEALED)**
- .0309 ADMINISTRATIVE RESPONSIBILITY (REPEALED)**
- .0310 EXTENDED EDUCATIONAL LEAVE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0311 PURPOSE**

The purpose of the educational assistance program is for workforce planning and development. The educational assistance program provides management with a means to support educational activities which are deemed beneficial to both the agency/university and employee, and which serve to develop the employee's knowledge, skills and abilities directly related to their current classification on the classification series in which they are working. The educational assistance program provides reimbursement of academic costs if funds are available at the agency/university level, and/or time off the job if the course is available only during working hours.

*Statutory Authority G.S. 126-4.*

**.0312 ELIGIBILITY**

(a) Eligible Employees. Full-time or part-time employees who have gained permanent status are eligible for this program. Trainees may be determined as eligible by management after satisfactory performance for a period of not less than three months.

(b) Ineligible Employees. Employees in temporary and probationary status or who do not meet the minimum educational requirements for

the job are not eligible for educational assistance. Work-study requirements for trainees shall be administered in accordance with the extended educational leave policy.

(c) Eligible Sources. Any accredited high school, business school, community college, technical institute, college, university, correspondence school or other educational source approved by the State Personnel Director is eligible for selection.

(d) Academic courses which are audited are eligible for educational assistance; however, an employee may be reimbursed for the same course or course equivalent only once. Reimbursement requires a statement written on school letterhead and signed by the instructor that the employee attended at least 85 percent of the scheduled class meetings during the academic term.

*Statutory Authority G.S. 126-4.*

**.0313 APPROVED COURSES**

The determination, by management, whether to provide assistance to take a specific course, is based on the principle: "Deemed beneficial to both the agency/university and the employee's knowledge, skills and abilities to do the job". Examples of this are courses which are offered at the junior college, undergraduate, or graduate level such as the following:

- (1) Courses which provide knowledge and skills directly related to maintaining or improving current job skills ("current job" means same status and pay); courses mandated by law or regulation or which are required by the employer in order for the employee to retain the job;
- (2) Courses directly related to the profession in which the employee is currently working, current classification or classification series, other than course for incumbent employees who do not meet the minimum educational and experience requirements for the job;
- (3) Courses included in an academic program directly related to the job or current classification or classification series, and which are necessary to complete a degree program other than courses for incumbent employees who do not meet the minimum educational and experience requirements for the job.

Assistance should not be granted in cases where management has determined that neither the course, nor the degree pursued, is of sufficient benefit to the agency/university. Exceptions to the approved courses policy shall be approved by the agency/university head or their designee.

*Statutory Authority G.S. 126-4.*

**.0314 EDUCATIONAL LEAVE**

An approved course should be taken on the employee's own time. If a course can be taken only during working hours, eligible employees must request leave prior to the beginning of the course allowing sufficient time for the normal approval process. Educational leave during work hours may be approved not to exceed one course per academic term (a semester, quarter or summer session) up to five semester hours or eight quarter hours credit. (Use class laboratory contact hours per week to compute equivalency.) Reasonable travel time as determined by the supervisor may be permitted to attend approved courses.

*Statutory Authority G.S. 126-4.*

**.0315 THESIS/DISSERTATION RESEARCH COURSES**

Job-related thesis dissertation research courses at the masters doctoral level are restricted as follows:

- (1) All required written examinations for the degree shall be successfully completed before the course is approved.
- (2) A maximum of 15 hours leave may be approved for each academic credit hour. All leave hours must be used during the academic term and may not be accumulated.
- (3) A maximum total of nine academic credit hours is allowed for any one employee.

*Statutory Authority G.S. 126-4.*

**.0316 ACADEMIC COSTS**

Academic costs are defined as charges assessed by an eligible source to every person enrolling for the course. These charges must be required of everyone and are neither negotiable nor discretionary for the individual enrolling in the course. Academic costs include tuition, fees and course lab fees. Course lab fees must always be itemized. Reimbursement of course lab fees may require a written statement from the eligible source justifying the fee as a required fee in addition to other fees.

*Statutory Authority G.S. 126-4.*

**.0317 REIMBURSEMENT OF ACADEMIC COSTS**

(a) Eligible employees may be reimbursed academic costs charged by the eligible source attended (but note the exceptions as listed below):

- (1) University of North Carolina institutions. 100 percent of academic costs for up to 10 semester hours or 16 quarter hours

credit per academic term. Employees may be reimbursed each fiscal year for a maximum of 20 semester hours or 32 quarter hours credit, but not for more than four courses.

(2) North Carolina Community Technical Colleges (state funded). 100 percent of academic costs for all courses per quarter up to a maximum of four quarters per fiscal year.

(3) All other eligible sources. Up to the maximum academic cost charged by institutions of the University of North Carolina. This amount will be determined by the Office of State Personnel and published within 10 working days of the end of the annual session of the N.C. General Assembly. Reimbursement is limited to 10 semester hours or 16 quarter hours credit per academic term. Employees may be reimbursed each fiscal year for a maximum of 20 semester hours or 32 quarter hours credit, but not for more than four courses.

(b) Exceptions. Graduate professional programs (medicine, veterinary medicine, etc.) with unusual course lab fees, tuition or other fees will be considered on a course by course basis. Agency heads may approve payment of these academic costs.

(c) Reimbursement shall not be made for charges, other than academic costs, specifically related to processing or receiving CEUs (continuing education units).

(d) Reimbursement shall not be authorized for transportation costs, graduation fees, examination fees, textbooks and supplies.

(e) Financial assistance from any other financial aid program shall not be duplicated under this program. However, the difference, if any, between such aid and the allowable costs under the state's plan may be reimbursed.

(f) When employees of an educational institution or any other state agency are granted free tuition, the value of this tuition must be considered as part of the allowable academic costs.

(g) The applicant employee shall receive reimbursement of approved academic costs upon submitting evidence of satisfactory completion of the course, and documenting academic costs. Requests for reimbursement should be submitted within 30 days of completion of the course.

(h) If an employee transfers to another state agency university, and subsequently completes an approved course, the employee should submit a request for reimbursement to the employing agency university. The employing agency university is responsible for processing the request

## ***PROPOSED RULES***

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per the provisions of this policy, and providing reimbursement if funds are available. Employees who separate from state service, except by reduction in force, are not eligible for reimbursement.

*Statutory Authority G.S. 126-4.*

### **.0318 TAX STATUS**

The U.S. Internal Revenue Service Code specifies that employer reimbursed educational assistance is subject to all withholding taxes if the reimbursement is for courses which prepare an employee to meet minimum job requirements or to qualify for a new job. Agencies/universities and employees are advised that these rules on reimbursement comply with the IRS Code regarding employee tax liability. To determine employee tax liability for reimbursement under this program, the agency/university should apply the following tests:

- (1) Does the employee meet the minimum educational requirements for the job?
  - (a) No. Then the employee is ineligible for educational assistance.
  - (b) Yes. Then see Subparagraph (2).
- (2) Is the requested course(s) a graduate (post-baccalaureate) course?
  - (a) Yes. Then reimbursement is subject to withholding tax and FICA.
  - (b) No. Then see Subparagraph (3).
- (3) Is each requested course to maintain or improve current job skills or to comply with law/regulation/rule or to comply with the employer's requirements in order for employee to retain his job?
  - (a) No. Then reimbursement is subject to withholding and FICA.
  - (b) Yes. Then see Subparagraph (4).
- (4) Would completion of the course(s) qualify the employee for a new position (change in status or pay) or make the employee eligible to take an examination which would qualify him for a new position?
  - (a) Yes. Then reimbursement is subject to withholding and FICA.
  - (b) No. Then no taxes are withheld.

*Statutory Authority G.S. 126-4.*

### **.0319 APPLICATION PROCEDURES**

(a) To receive Educational Assistance, an employee shall make application with his immediate supervisor. The application should include:

- (1) The course title(s), institution and location, class schedule, and whether the course is for credit or non-credit, or for certification/licensing.

- (2) A description of the course(s), demonstrating how the course(s) meet criteria for the approved courses, or for certification/licensing.
  - (3) The amount of academic cost reimbursement, specifying tuition and/or fees, and any course/lab fees requested.
  - (4) A specification of requested time off from work for educational leave including all travel time.
  - (5) If time off from work is requested, a statement demonstrating unavailability of the course except during work hours.
  - (6) Employees applying for educational assistance should receive a written response from management regarding approval /disapproval of educational assistance requests, which notes any changes in the application or conditions of approval. The response must also indicate whether the reimbursement for the course is subject to withholding taxes or not.
- (b) The application must be submitted in advance in accordance with schedules established by the agency/university to allow time for appropriate review, approval and notification of the employee. Agency/university heads, or a designee, may approve an application received after class begins if circumstances warrant.

*Statutory Authority G.S. 126-4.*

### **.0320 EXCEPTIONAL SITUATIONS**

Courses taken at agency/university request and courses taken under the Extended Educational Leave policy require prior written approval of the agency/university head or their designee.

*Statutory Authority G.S. 126-4.*

### **.0321 COURSES TAKEN AT AGENCY/ UNIVERSITY REQUEST**

(a) Because of specific high priority skill needs of the agency/university, employees may be requested by management to take specific courses or degree programs. Under these circumstances, all limitations under the provisions of this policy are waived, except requirements for withholding taxes and FICA. All expenses to the individual should be reimbursed, to include: transportation costs; examinations and administrative fees; textbooks and other course materials. (Any books or materials paid for by the agency/university become the property of the agency/university.)

(b) If the hours or number of courses involved exceed the limits of the educational assistance program, then the situation shall be administered

under the policy provisions for Extended Educational Leave.

(c) The designation, "At Agency/University Request," can only be determined with the approval of the agency/university head (at Departmental/University level), or designee.

*Statutory Authority G.S. 126-4.*

**.0322 EXTENDED EDUCATIONAL LEAVE**

(a) State agencies/universities may consider any employee (permanent, probationary, or trainee) for extended educational leave to participate in job or career-related work study, scholarship or fellowship programs based upon the following criteria:

- (1) Verification that both labor market and organizational needs exist for development in program requested.
- (2) Equal opportunity provided in selection of candidate(s).
- (3) Employees are informed of agency /university policies and procedures regarding:
  - (a) Announcement and application procedures;
  - (b) Screening and selection of employees;
  - (c) Limitations and restrictions on training;
  - (d) Leave, salary and benefit conditions and any withholding taxes and FICA;
  - (e) Employment agreement.
- (b) Agency university policies and procedures must be submitted to the Office of State Personnel for review and approval prior to implementation or upon subsequent updates and revisions. Requests for extended educational leave initiated by the employee and which do not meet with the criteria in this Rule will be administered according to the State Personnel policy on leave without pay.

*Statutory Authority G.S. 126-4.*

**.0323 CERTIFICATION/LICENSING**

(a) Incumbent employees who meet minimum educational requirements and for whom certification licensing is required after employment or is deemed desirable by management and approved by the agency/university head or their designee are eligible for educational assistance under the following conditions:

- (1) certification/licensing is mandated by act of the General Assembly, or
  - (2) certification/licensing is a policy requirement of the employing agency/university.
- (b) Educational leave is authorized for courses and examinations required for initial certification license and renewal of the certification license. Reimbursement is author-

ized for 100 percent of the academic costs, less any applicable withholding taxes and FICA.

(c) Certification/licenses resulting solely from attainment of academic degrees shall be considered under educational assistance for academic course work.

*Statutory Authority G.S. 126-4.*

**.0324 ADMINISTRATION RESPONSIBILITY**

(a) The Office of State Personnel is responsible for the interpretation of this policy.

(b) Each state agency, department, or university is delegated responsibility for, and authority to, administer the program within the provisions of this policy. This delegation is contingent on the prior submission of a written policy, outlining procedures to implement the program, and the written approval of the State Personnel Director. Any subsequent policy, procedures, or practice which either liberalizes or restricts any rule in this Section, likewise requires prior written approval of the State Personnel Director. State Equal Employment Opportunity and Affirmative Action policies, procedures and rules in this Chapter, including those pertaining to statistical data, are applicable to all rules in this Section.

(c) Each state agency/university is responsible for retaining records of educational assistance activity. This information shall be reported annually to the Office of State Personnel upon request and shall include the following data:

- (1) Total number of employees participating in the Educational Assistance Program;
- (2) Total amount reimbursed;
- (3) Total number of employees granted Educational Leave;
- (4) Total number of employees taking courses at agency's request;
- (5) Total number of employees granted Extended Educational Leave;
- (6) Total number of employees taking audited courses;
- (7) Total number of employees taking courses for purposes of mandated required certification/licensing.

(d) Statistical information should be kept on a fiscal year basis, beginning on July 1 and ending on June 30. All information should be available to the Office of State Personnel as requested.

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER I - STATE EMPLOYEES  
WORKPLACE REQUIREMENTS FOR SAFETY  
AND HEALTH POLICY**

**.0004 PROGRAM ADMINISTRATION**

## ***PROPOSED RULES***

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- (a) The State Personnel Director is responsible through designated staff for developing, implementing, and monitoring agency participation in programs for improving workplace safety and health. ~~for providing technical assistance to agencies and education for employees through the coordinated resources of the N.C. Department of Labor, the Health Services Division of the Department of Human Resources, and the N.C. Industrial Commission.~~ The director will establish lines of communication between state agencies to refine and expand the workplace requirements for safety and health. This is to be accomplished by providing consultative and support services through the Employee Safety and Health Division that include:
- (1) technical assistance in the design and development of agency program as well as request for assistance with specialized workplace hazards;
  - (2) a systematic evaluation and inspection of state operations to ensure the identification and control of hazardous workplace environments and unsafe work practices which could endanger state employees;
  - (3) industrial hygiene services for the smaller agencies;
  - (4) development of Statewide Employee Safety and Health Handbooks describing the responsibilities of participation by employees and outlining the basic rules for working safely in state government;
  - (5) investigation of work-related fatalities and lost workday injuries and illnesses to ensure that agencies have program elements in place to control specific hazards;
  - (6) training programs for safety and health officers through coordinated resources of the N. C. Department of Labor, the Department of Human Resources, and the N. C. Industrial Commission;
  - (7) a statewide data information service for analyzing work-related injuries and illnesses and their related cost.

To assist the director, he shall appoint a State Steering Committee, to include program staff of state agencies who shall recommend program changes, goals, and solutions to problems. Any additions or significant changes to the administrative or workplace requirements procedures will occur only after consultation with the State Steering Committee.

*Statutory Authority G.S. 95-148; 126-4(5) (10); Executive Order No. 6.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Codified" and the text of the adopted rule will not be republished.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.*

**NORTH CAROLINA ADMINISTRATIVE CODE**

**LIST OF RULES CODIFIED**

**MAY 1989**

<b>AGENCY</b>		<b>ACTION TAKEN</b>	
<b><u>COUNCIL OF STATE</u></b>			
6	NCAC 1	.0001 - .0006	Amended
	2	.0001 - .0004	Amended
	3	.0001 - .0003	Repealed
		.0004	Amended
	4	.0001 - .0002	Amended
<b><u>DEPARTMENT OF CORRECTION</u></b>			
7	NCAC 1A	.0101 - .0102	Repealed
		.0201 - .0205	Repealed
		.0405	Repealed
	1B	.0109	Repealed
		.0201 - .0217	Repealed
	1C	.0102 - .0108	Repealed
		.0201 - .0216	Repealed
	2A	.0103 - .0110	Repealed
		.0202	Repealed
	2B	.0103 - .0104	Repealed
	2C	.0106 - .0107	Repealed
		.0203	Repealed
		.0303	Repealed
	2D	.0201 - .0203	Repealed
	2F	.0005	Repealed
	3A	.0001 - .0002	Repealed
	3B	.0101	Repealed
		.0201	Repealed
		.0203	Repealed
		.0205 - .0206	Repealed
		.0303	Repealed
		.0402 - .0404	Repealed
		.0503	Repealed
		.0509	Repealed
	3E	.0101 - .0108	Repealed
		.0201 - .0202	Repealed
		.0301 - .0302	Repealed

## ***FINAL RULES***

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		.0401 - .0402	Repealed
		.0501 - .0503	Repealed
		.0601 - .0603	Repealed
3F		.0101 - .0105	Repealed
		.0201 - .0207	Repealed
		.0301 - .0302	Repealed

### **OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR**

9	NCAC	3A	.0201 - .0215	Repealed
			.0301 - .0303	Repealed
			.0401 - .0403	Repealed
			.0501 - .0504	Repealed
3B			.0001 - .0002	Repealed
3C			.0101 - .0102	Repealed
			.0201 - .0202	Repealed
3D			.0101 - .0104	Repealed
			.0201 - .0204	Repealed
			.0301 - .0304	Repealed
			.0401 - .0408	Repealed
			.0501 - .0502	Repealed
			.0601 - .0606	Repealed
			.0701 - .0702	Repealed
			.0801 - .0804	Repealed
3E			.0101 - .0102	Repealed
			.0201 - .0203	Repealed
			.0301 - .0307	Repealed
			.0401 - .0407	Repealed
			.0501 - .0505	Repealed
3F			.0001 - .0004	Repealed
3G			.0101 - .0105	Repealed
			.0201 - .0204	Repealed
3H			.0001 - .0003	Repealed
3K			.0101 - .0102	Repealed
			.0201 - .0206	Repealed
			.0301 - .0304	Repealed
			.0401 - .0404	Repealed
			.0501 - .0512	Repealed
			.0601 - .0607	Repealed
			.0701 - .0707	Repealed
			.0801 - .0815	Repealed
			.0901 - .0906	Repealed
4			.0101 - .0103	Repealed
			.0201 - .0203	Repealed

### **DEPARTMENT OF HUMAN RESOURCES**

10	NCAC	3R	.2404	Temp. Amended Expires 09-27-89
		7C	.0602	Correction
		10A	.0487	Correction
		27	.0009	Amended

### **DEPARTMENT OF INSURANCE**

11	NCAC	4	.0428	Adopted
		12	.0701 - .0703	Adopted
			.0705	Adopted
			.0707 - .0708	Adopted

***FINAL RULES***

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13	.0301	Amended
	.0303	Amended
	.0305 - .0306	Amended
	.0308 - .0310	Amended
	.0313	Amended
	.0316 - .0318	Amended
	.0323 - .0324	Amended
	.0325	Adopted
	.0501	Amended
	.0514	Amended
	.0517	Adopted

**DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

15	NCAC	2B	.0216	Amended
			.0308	Amended
		2F	.0103	Amended
		10F	.0307	Amended
			.0314	Amended
			.0321	Amended
			.0327	Amended
			.0330	Amended
			.0342	Amended
			.0357 - .0360	Adopted
		16E	.0103	Temp. Amended
			.0201	Expires 09-26-89
				Temp. Amended
				Expires 09-26-89

**DEPARTMENT OF REVENUE**

17	NCAC	9G	.0510	Correction
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**BOARD OF ARCHITECTURE**

21	NCAC	2	.0101 - .0108	Amended
			.0202 - .0203	Amended
			.0205 - .0215	Amended
			.0301	Amended
			.0303	Amended
			.0401 - .0406	Amended
			.0407 - .0414	Repealed
			.0501	Amended
			.0502 - .0505	Repealed
			.0601 - .0610	Amended
			.0701 - .0705	Amended
			.0801 - .0802	Repealed

**BOARD OF BARBER EXAMINERS**

21	NCAC	6A	.0101	Repealed
			.0102 - .0104	Amended
			.0105	Repealed
			.0201 - .0205	Repealed
			.0209	Repealed
			.0301	Amended
			.0303	Amended
			.0306	Repealed
		6B	.0101	Amended

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***FINAL RULES***

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	.0102	Repealed
	.0103	Amended
	.0104	Repealed
	.0105	Amended
	.0106 - .0107	Repealed
	.0201	Repealed
	.0202	Amended
	.0203	Repealed
	.0204	Amended
	.0301 - .0302	Amended
	.0303 - .0304	Repealed
	.0305 - .0309	Amended
	.0401 - .0402	Amended
	.0501 - .0503	Amended
	.0504	Repealed
	.0506 - .0507	Repealed
	.0601 - .0602	Repealed
6C	.0101	Amended
	.0102	Repealed
	.0202 - .0203	Amended
	.0205	Amended
	.0301 - .0304	Repealed
	.0401 - .0402	Repealed
	.0501 - .0504	Amended
	.0601	Amended
	.0602	Repealed
	.0701	Amended
	.0702	Repealed
	.0801	Amended
	.0802 - .0806	Repealed
	.0807	Amended
	.0901 - .0902	Repealed
	.0903 - .0907	Amended
	.0908	Repealed
	.0909	Amended
	.0910 - .0911	Repealed
6D	.0101	Amended
	.0102 - .0105	Repealed
	.0201 - .0205	Repealed
	.0301 - .0310	Repealed
	.0401 - .0402	Repealed
	.0501 - .0503	Repealed
6E	.0101 - .0103	Repealed
	.0201 - .0205	Repealed
6F	.0001 - .0004	Amended
	.0005 - .0007	Repealed
	.0009 - .0011	Amended
	.0012	Repealed
	.0013 - .0014	Amended
	.0015	Repealed
	.0016	Amended
	.0017	Repealed
	.0019 - .0020	Amended
6G	.0001 - .0002	Repealed
	.0003	Amended
	.0004 - .0005	Repealed
6H	.0001 - .0002	Amended
6I	.0001	Amended
	.0005	Amended

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*FINAL RULES*

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6J	.0001 - .0003	Amended
	.0005	Repealed
	.0006	Amended
	.0007	Repealed
	.0008	Amended
6K	.0001	Amended
	.0003 - .0004	Amended
	.0005	Repealed
	.0009	Repealed
6L	.0002 - .0007	Amended
	.0009	Amended
	.0010	Repealed
6M	.0001 - .0002	Amended
6N	.0001 - .0010	Amended
	.0011 - .0012	Adopted

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21	NCAC	8A	.0102 - .0103	Amended
			.0105	Amended
			.0201	Amended
			.0202	Repealed
			.0301	Amended
			.0308	Amended
			.0309 - .0310	Adopted
	8B	.0101 - .0102		Amended
			.0104 - .0105	Amended
			.0202	Amended
			.0304	Amended
			.0307	Amended
			.0501	Amended
			.0503	Amended
			.0507 - .0508	Amended
	8C	.0103 - .0105		Adopted
			.0107 - .0111	Adopted
			.0114 - .0116	Adopted
			.0118	Adopted
			.0121 - .0125	Adopted
			.0503	Repealed
			.0805 - .0808	Repealed
			.0903	Repealed
			.0905 - .0908	Repealed
			.0910	Repealed
	8D	.0103		Repealed
			.0202 - .0204	Repealed
			.0303	Repealed
			.0306 - .0310	Repealed
			.0503	Repealed
	8E	.0103		Repealed
			.0201 - .0205	Repealed
	8F	.0101 - .0103		Amended
			.0106 - .0107	Amended
			.0110	Amended
			.0111	Adopted
			.0302	Amended
			.0304	Amended
			.0305	Repealed
			.0402	Repealed
			.0409	Amended

## ***FINAL RULES***

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	.0501 - .0502	Amended
	.0504	Amended
8G	.0101 - .0103	Amended
	.0106 - .0109	Amended
	.0110	Repealed
	.0112 - .0113	Amended
	.0114	Adopted
	.0201 - .0204	Amended
	.0208 - .0212	Amended
	.0213	Adopted
	.0301 - .0306	Amended
	.0401	Amended
	.0402	Repealed
	.0403 - .0404	Amended
	.0406	Amended
	.0407	Repealed
	.0409	Adopted
8H	.0001 - .0005	Amended
8I	.0001 - .0002	Amended
	.0003	Repealed
	.0004	Amended
	.0006	Repealed
8J	.0001 - .0003	Amended
	.0005 - .0006	Amended
	.0008	Amended
8K	.0104 - .0105	Amended
	.0201	Amended
8L	.0001 - .0002	Amended
	.0005 - .0006	Amended
	.0008	Amended
	.0010 - .0017	Amended
	.0019 - .0023	Amended
	.0025	Amended

### LICENSING BOARD FOR GENERAL CONTRACTORS

21	NCAC 12	.0102 - .0103	Amended
		.0201	Repealed
		.0202	Amended
		.0203	Repealed
		.0204 - .0205	Amended
		.0206	Repealed
		.0301	Amended
		.0303	Amended
		.0304	Repealed
		.0305	Amended
		.0307 - .0308	Amended
		.0401	Repealed
		.0402 - .0403	Amended
		.0404	Repealed
		.0405	Amended
		.0406 - .0407	Repealed
		.0408	Amended
		.0501	Amended
		.0503 - .0504	Amended
		.0701 - .0703	Amended

### BOARD OF DENTAL EXAMINERS

## *FINAL RULES*

## BOARD OF REGISTRATION FOR FORESTERS

21 NCAC 20 .0003 - .0007  
              .0009 - .0010  
              .0013 - .0018 Amended  
              Amended  
              Amended

## *FINAL RULES*

.0019 Repealed

## BOARD OF GEOLOGISTS

## **HEARING AID DEALERS AND FITTERS BOARD**

21 NCAC 22J .0005 Amended

## **BOARD OF MEDICAL EXAMINERS**

21	NCAC 32A	.0001 .0002 - .0003 .0004 - .0007 .0008 - .0010	Amended Repealed Amended Repealed
	32B	.0101 - .0103 .0201 - .0207 .0208 .0209 - .0214 .0301 .0302 - .0314 .0401 - .0402 .0403 .0501 - .0508 .0601 - .0608 .0701 - .0703 .0705 - .0707	Adopted Amended Repealed Amended Amended Amended Amended Repealed Amended Amended Amended Amended Amended Amended Amended
	32C	.0001 .0002 - .0008	Repealed Amended
	32F	.0001 - .0002 .0003 .0005	Repealed Amended Amended
	32I1	.0101 - .0102 .0201 .0301 - .0303 .0401 - .0407 .0501 - .0505 .0601 - .0602 .0701 .0801 - .0802 .0901 .1002 .1004	Amended Amended Amended Amended Amended Amended Amended Amended Amended
	32I	.0001 - .0004	Amended
	32J	.0001 - .0003	Amended
	32K	.0101 - .0104 .0201 - .0202 .0204 - .0208	Amended Amended Amended

## **BOARD OF NURSING**

## BOARD OF NURSING HOME ADMINISTRATORS

## ***FINAL RULES***

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21	NCAC 37	.0101	Amended
		.0102 - .0104	Repealed
		.0106 - .0107	Repealed
		.0108	Amended
		.0109	Repealed
		.0110	Amended
		.0111 - .0115	Repealed
		.0201 - .0205	Repealed
		.0208	Amended
		.0209 - .0210	Repealed
		.0301	Amended
		.0303 - .0304	Amended
		.0305	Repealed
		.0307	Repealed
		.0308	Adopted
		.0402	Amended
		.0403	Repealed
		.0404 - .0405	Amended
		.0408	Repealed
		.0501 - .0502	Amended
		.0503	Repealed
		.0504 - .0510	Amended
		.0512 - .0519	Amended
		.0520	Adopted
		.0601 - .0602	Repealed
		.0603 - .0604	Amended
		.0605	Repealed
		.0606	Amended
		.0705	Amended
		.0708	Amended
		.0801	Amended
		.0804	Repealed
		.0805	Amended
		.0901 - .0902	Amended
		.0904	Amended
		.0907	Amended
		.0908	Repealed
		.0909	Amended
		.0910	Repealed
		.0912 - .0914	Amended
		.1001	Amended
		.1002	Repealed
		.1003 - .1004	Amended
		.1005	Repealed
		.1122	Amended
		.1201 - .1204	Adopted

### BOARD OF OCCUPATIONAL THERAPISTS

21	NCAC 38	.0103	Amended
		.0104	Repealed
		.0201	Amended
		.0203 - .0204	Amended
		.0301 - .0307	Amended
		.0401 - .0402	Amended
		.0501 - .0504	Adopted
		.0601 - .0614	Adopted

### BOARD OF OPTICIANS

## *FINAL RULES*

21 NCAC 40 .0213  
                  .0408 - .0421 Adopted  
                  Adopted

## **BOARD OF OSTEOPATHIC EXAMINATION AND REGISTRATION**

21 NCAC 44 .0001 - .0010 Repealed

BOARD OF PHARMACY

21	NCAC 46	.1201 - .1206	Amended
		.1301 - .1316	Repealed
		.1317	Adopted
		.1401 - .1404	Amended
		.1405	Repealed
		.1406	Amended
		.1407	Repealed
		.1408	Amended
		.1409	Repealed
		.1501 - .1504	Amended
		.1506 - .1507	Amended
		.1601 - .1602	Amended
		.1603 - .1604	Adopted
		.1701 - .1705	Amended
		.1802	Amended
		.1804 - .1806	Amended
		.1901 - .1902	Amended
		.1904	Amended
		.1906 - .1907	Amended
		.1910 - .1911	Amended
		.2001	Amended
		.2002 - .2003	Repealed
		.2006	Amended
		.2008 - .2011	Amended
		.2015 - .2016	Amended
		.2101	Repealed
		.2102 - .2105	Amended
		.2201	Amended
		.2301 - .2305	Amended
		.2401 - .2403	Amended
		.2501 - .2503	Adopted

## BOARD OF PHYSICAL THERAPY EXAMINERS

21        NCAC 48C .0101    Correction  
                48D .0005    Correction  
                48G .0404    Amended

## BOARD OF PLUMBING AND HEATING CONTRACTORS

21	NCAC	50	.0101 - .0102 .0103 - .0105 .0107 .0108 .0301 .0302 .0303 - .0304 .0306 - .0307 .0309	Repealed Amended Amended Repealed Amended Repealed Amended Amended Amended
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## FINAL RULES

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.0401	Repealed
.0402 - .0411	Amended
.0501	Amended
.0503	Amended
.0504	Repealed
.0505 - .0508	Amended
.1001 - .1013	Adopted
.1101 - .1103	Adopted

### BOARD OF PRACTICING COUNSELORS

21        NCAC 53    .0101                                  Repealed

### BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

21        NCAC 56    .1501                                  Adopted

### BOARD OF REFRIGERATION EXAMINERS

21        NCAC 60    .0209                                  Adopted

### BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

21	NCAC 64	.0101 - .0102	Amended
		.0104 - .0105	Amended
		.0202 - .0203	Repealed
		.0204	Amended
		.0401 - .0403	Amended
		.0501 - .0503	Amended
		.0601 - .0605	Amended
		.0606	Repealed
		.0701 - .0705	Amended
		.0801 - .0805	Amended
		.0806	Repealed
		.0901 - .0905	Amended

### VETERINARY MEDICAL BOARD

21	NCAC 66	.0101 - .0102	Amended
		.0103 - .0104	Repealed
		.0105 - .0108	Amended
		.0201 - .0203	Amended
		.0204	Repealed
		.0205 - .0208	Amended
		.0301	Amended
		.0302	Repealed
		.0303 - .0308	Amended
		.0401 - .0406	Amended
		.0407 - .0414	Repealed
		.0501	Amended
		.0502 - .0505	Repealed
		.0601 - .0610	Amended
		.0701 - .0705	Amended
		.0801 - .0802	Repealed

### DEPARTMENT OF COMMUNITY COLLEGES

23        NCAC 2D    .0328                                  Correction

### NORTH CAROLINA HOUSING FINANCE AGENCY

24 NCAC 1M .0201 - .0204 Amended

**OFFICE OF STATE PERSONNEL**

25	NCAC	1B	.0413	Amended
			.0416 - .0420	Repealed
			.0425 - .0426	Correction
		1C	.0413	Repealed
			.0701	Amended
		1D	.0204	Amended
			.0501	Amended
			.0802	Amended
			.0805	Amended
			.0807	Amended
			.1205	Amended
		1E	.0312	Amended
			.1005	Amended
		1H	.0614 - .0615	Correction
			.0618 - .0619	Repealed
			.0627	Repealed
		1I	.0204	Amended
			.0706 - .0707	Amended
		1J	.0402	Amended
			.0406 - .0407	Amended
			.0504	Amended
		1K	.0213	Repealed
			.0709	Repealed
		1N	.0003	Repealed

**OFFICE OF ADMINISTRATIVE HEARINGS**

26	NCAC	2A	.0201 - .0202	Amended
			.0402	Amended
		3	.0001	Amended
			.0030	Correction

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Public Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
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34	Mortuary Science, Board of
36	Nursing, Board of
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53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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